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Mrs. Deborah Schulte

Standing Committee on Environment and Sustainable Development

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● (1555)

[*English*]

The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)): I will bring the meeting to order.

We had a small delay, and to gain back the time, we've set ourselves to go to until seven o'clock. I am quite prepared to go longer, given the situation.

Is the committee willing to go longer?

Some hon. members: Agreed.

Hon. Ed Fast (Abbotsford, CPC): If you want to add some meetings, we'd be glad to consider that.

The Chair: No. I'm looking to go longer in time. I'm also thinking about tomorrow. Our meeting is set for 11 until 1:30.

I'm quite prepared to start the meeting at nine o'clock so that we have lots of time to go through the amendments and are able to discuss them.

Is there willingness to start at nine o'clock tomorrow?

Hon. Ed Fast: We have a commitment. We can't.

The Chair: It's up to you. If you can't, you can't.

I'm just offering an opportunity to do it. If you don't, we'll see you at 11 o'clock.

Ms. Linda Duncan (Edmonton Strathcona, NDP): Madam Chair, before we begin, I have a matter I want to raise that has come to the attention of all the committee members.

The Chair: Sure.

Ms. Linda Duncan: It's now into 2,000 to 3,000 letters that we've all received in our in-baskets today and they're continuing to come in. Canadians across the country are asking that the meetings on this bill be extended. They're deeply concerned that we won't get to the third part of the bill, on navigable waters protection, and there won't be proper review and debate of that.

Since we have all received these requests, mounting into the thousands, we should seriously consider a request I made some time ago that we need to be giving reasonable attention to every one of the 800 clauses and all three parts of the bill. I do not believe we can do that in the two more meetings after this one.

The Chair: I just asked to extend time so we could have more time and it has been refused by you and Mr. Fast.

I'm quite prepared to extend the meetings that we have available to us so that we can do exactly that, but I don't have willingness on that side of the committee to do that.

We're going to move on and do the very best we can with the time that is allotted.

Ms. Linda Duncan: Madam Chair, there are more options than just giving us 24-hour days. We can add additional days.

The Chair: I wasn't giving—

Ms. Linda Duncan: What is the crisis that we can't do a proper review of this bill?

The Chair: Okay, Linda. We're going to move back to the business of clause-by-clause. Thank you.

I tried to give more time—

Ms. Linda Duncan: I thought one of us could speak up for all the people who've written to all of us.

The Chair: I did. I just tried to give more time—

Hon. Ed Fast: Thank you.

The Chair: —and you weren't willing to do that.

Thank you. We'll move to clause-by-clause.

Hon. Ed Fast: No, I want to speak to this. My name is on there.

The Chair: Sorry. Go ahead, Mr. Fast.

Hon. Ed Fast: Madam Chair, first of all, I take exception to the fact that you are somehow suggesting at this very late stage, here in the middle of a meeting, that our meetings be extended by an hour or two hours when we asked a long time ago that additional days be allocated for a review of the bill and for a review of the amendments that have come before us.

By the way, I am advised by my staff that the number of letters received is actually 4,000.

Ms. Linda Duncan: Is it 4,000 letters now?

Hon. Ed Fast: Yes, 4000 letters.

Here we are at this table, ramming through a bill that Canadians know is deeply flawed.

How can you, as chair, preside over such a situation? I'm shocked.

The Chair: I wouldn't be shocked, because if you want to go back into the records, you can see how many times I've asked this committee to have an extra day on Monday or extend the times, and there has been no willingness to do that.

We are where we are. I understand there are a lot of amendments in front of us to try to amend the bill. That's what I would like to spend the time on, to go through the amendments to see where we can amend the bill.

All right? Thank you.

Linda, very quickly.

Ms. Linda Duncan: With all due respect, we have other responsibilities as MPs. When you're simply adding on another hour here or there when we have commitments, including to our constituents, we're simply asking for more days on this bill. What is the problem? What's the urgent business of this committee after the Tuesday that we get back?

The Chair: Linda, check the record. I asked Monday of this week to do it and there was no willingness to do that.

Ms. Linda Duncan: You're adding more hours in a day. I'm asking for more days.

The Chair: I was asking for extra days on Monday, and that was denied by—

Ms. Linda Duncan: It's extra hours on.

That's fine.

The Chair: The record stands on what I've been asking for on a regular basis and it has been rejected.

Let's move on to the work at hand—

Ms. Linda Duncan: Like our vote counts.

The Chair: —to spend as much time as we can on going through the amendments that have been brought forward with lots of thought on how we can make this bill better.

First up, I think—

Mr. Robert Sopuck (Dauphin—Swan River—Neepawa, CPC): No, very quickly, we have votes at six o'clock. Are you still intending—?

The Chair: We have no votes today.

Mr. Robert Sopuck: There are no votes? Okay.

The Chair: We're good until 7 p.m. I'd just like us to get moving.

(On clause 1)

The Chair: We've done amendment PV-7. That's how we finished. Now we have amendment NDP-16.

Linda, you're up.

Ms. Linda Duncan: Madam Chair, I'm not sure at this stage how many of the provisions of the bill have been amended, but I am recommending here that we replace line 41 on page 8, again adding in a reference to "the United Nations Declaration on the Rights of Indigenous Peoples, adopted on September 13, 2007".

The Chair: Thank you. We had discussion on this yesterday.

Shall the amendment carry?

● (1600)

Hon. Ed Fast: We each have five minutes, I understand.

The Chair: No, you don't, actually. In fact, the way the motion was made, it was five minutes per clause. I have gone way over five minutes per clause. I was applying as much discretion as I could to give time for amendments, so we're going to tighten it up.

There really isn't five minutes per amendment. It was five minutes for each party per clause.

Hon. Ed Fast: Wow. On a point of order, Madam Chair, this is going from bad to worse. What we now find out is that we won't even have time to debate the amendments that have been put forward by each of the members of this committee. We've already had our time for witnesses cut short because of a programming motion brought forward by the government.

How can you justify ramming through amendment after amendment without full debate? It's unconscionable for you to suggest it. I have never been at a committee table quite like this one. If this is the way we're going to comport ourselves and deal with what is arguably the most important legislation this government will bring forward in this Parliament....

The Chair: Ed, this particular amendment was discussed yesterday. It's just showing up in another place. You had not allowed me to collect them last time because you wanted to make sure that in each context they didn't have some different ramification, so we're on this one again.

It's the same as with the discussion we had yesterday. If you have something special to add today that is different, I'm willing to listen to it, but I want to know what's different about the discussion today from what you said yesterday on this particular point.

Hon. Ed Fast: I'd be glad to tell you.

The United Nations Declaration on the Rights of Indigenous Peoples, which is an important declaration, is one that has provisions in it that provide for free, prior, and informed consent, FPIC, as it's commonly known. We have no analysis here at this table from our officials as to whether FPIC actually provides first nations with a full and absolute right of veto, or whether it's something slightly less than a veto, or whether it just buttresses the current duty to consult, which has been considered by courts across this country for decades, and we now have a pretty good idea of what that looks like.

To incorporate that declaration into this legislation would be a huge risk, and we would do so without knowing the legal import of that declaration as it relates to the Canadian constitution. That's why I am opposing this.

I believe Ms. Duncan knows where I stand on this. I don't think we should be taking steps that haven't been thoroughly thought out from a legal perspective, and unfortunately, we don't have those legal minds at the table right now.

The Chair: Right. This is exactly the discussion we had yesterday, so thank you very much for it, and I will put the question.

Ms. Linda Duncan: I was speaking. I'm not finished yet.

Are there questions from the Liberals on this?

The Chair: No, there are no questions. We had this discussion yesterday.

Ms. Linda Duncan: I have a question that I want an answer to.

We have accepted the addition of the UNDRIP in other places in the bill, and I asked specifically, was the Liberal motion going forward to all provisions. No, it wasn't. We're going to do them one by one.

Here, then, is a very obvious place in which the UNDRIP must be mentioned, because it talks about the rights of indigenous peoples in Canada and about section 35 of the Constitution Act.

That is therefore my amendment at this place in the bill. When it is specifically titled, "Rights of Indigenous Peoples of Canada", it seems appropriate to me that this be another place in which the UNDRIP should be referenced.

Mr. William Amos (Pontiac, Lib.): Madam Chair, simply put, yes, we've advanced amendments to incorporate UNDRIP in several locations. We'll be advancing three more over the course of the coming days. The government members feel that those are the appropriate places in this bill to introduce UNDRIP, and so we don't feel that this proposal is necessary. We suggest, with respect, that we move to a vote.

The Chair: Okay.

Ms. Linda Duncan: Are we doing a recorded vote?

Hon. Ed Fast: I'd like a recorded vote.

The Chair: If it's called, we do a recorded vote.

(Amendment negatived: nays 8; yeas 1 [See *Minutes of Proceedings*])

● (1605)

Ms. Linda Duncan: That's unbelievable. We'll be remembering.

The Chair: Now we're on amendment NDP-17.

Ms. Linda Duncan: Madam Chair, this amendment specifically comes from the Grand Council of the Crees, who provided a brief and also appeared before us. They presented the opinion that, as with the Mackenzie basin agreement, the James Bay and Northern Quebec Agreement should similarly be referenced.

Why do they argue that? Well, their agreement, the James Bay and Northern Quebec Agreement, is a modern treaty, and therefore it is binding and it takes precedence over any potentially incompatible legislation. I'm advised that, pursuant to that agreement, Canada is required to develop, in close co-operation with the Cree representatives, the required agreements and regulations contemplated under parts 1 and 2 of Bill C-69. They provide specific factors where federal impact assessment must be triggered for any project that is on, or partly on, their territory. That's in the treaty. Treaty members must be appointed to all federal and provincial assessment and review processes as per the treaty, and it must be led by the environmental and social impact review committee under the treaty. Any modifications to the provisions of the treaty must have the consent of the signatories.

I don't think I need to read it into the record, unless you'd like me to do so.

The Chair: No, you don't need to.

Ms. Linda Duncan: The proposal has been circulated. Essentially, they are asking for a new section, proposed section 4.1:

> The following physical activities carried out partly or completely on the territory of the James Bay and Northern Quebec Agreement that have effects within federal jurisdiction are deemed to be designated projects:

Then they give details thereunder.

The Chair: Is there any discussion?

Go ahead.

Hon. Ed Fast: Do we have any legal expertise here at the table at all from our officials to be able to tell us whether the James Bay and Northern Quebec Agreement actually has the status of a treaty in Canada?

The Chair: Who would like to speak to that?

Mr. Jean-Sébastien Rochon (Counsel, Department of Justice): Yes. The James Bay and Northern Quebec Agreement is usually considered the very first modern treaty with indigenous groups in Canada.

Hon. Ed Fast: Do you know why it hasn't been incorporated into the bill?

Ms. Christine Loth-Bown (Vice-President, Policy Development Sector, Canadian Environmental Assessment Agency): In the definition of "jurisdiction", actually, land claims and modern treaties are incorporated into the bill. Clause 4, as interpreted in the legislation, does give the opportunity to exclude the legislation on areas where it's so chosen to be, by adding to the schedule.

Hon. Ed Fast: Are you suggesting that Ms. Duncan's concerns are misplaced?

Ms. Christine Loth-Bown: I'm suggesting that the creation of a schedule under clause 4 does allow for those modern treaty and land claims groups to identify the opportunity to have the legislation excluded from their territory should they choose to pursue that.

Hon. Ed Fast: All right.

Ms. Linda Duncan: Could I ask for a further clarification? Then why is only one treaty excluded? Why is it only the Mackenzie basin agreement? Surely they would be covered by that as well. Why did the government decide to include only one modern treaty?

The Chair: Is there any clarification?

Ms. Christine Loth-Bown: In terms of the James Bay and Northern Quebec Agreement, we've been having discussions with the Cree for some time in terms of situations on how to apply the impact assessment to their treaty area. I don't want to get into a long part of it, but there are different elements. Depending on the type of impact assessment and the location within their treaty area, sometimes it triggers the federal government, and sometimes it triggers the provincial government. It's a complex structure. We've been working through that with them on how to apply it, and have indicated to them that if they so choose, it can be excluded, and can be done under proposed section 4. We've had these conversations with the Inuvialuit as well, that proposed section 4, which refers to schedule 2, offers the opportunity to have it excluded should they so choose.

Ms. Linda Duncan: Are you speaking of substitution or are you speaking of a joint review? What are you really saying would happen?

Ms. Christine Loth-Bown: No, I'm speaking of having the law of general application not apply within the treaty territory, should they choose to do impact assessment under their treaty legislation and not have the federal government present there. There's the opportunity to pursue that path through proposed section 4.

Ms. Linda Duncan: Through proposed section 4....

Ms. Christine Loth-Bown: It's the "non-application" clause.

The Chair: Let me just clarify. The intent of this particular amendment that is in front of us, from what I'm hearing said, is that there is already provision within the act to cover this amendment.

● (1610)

Ms. Christine Loth-Bown: Yes, there is provision within the act to have the act not apply within treaty areas by adding to schedule 2.

The Chair: Thank you very much. I think we have clarity there.

Ms. Linda Duncan: Unfortunately, nobody, including the James Bay Cree, knows what is on schedule 2.

Are you saying here today that you're willing to put the James Bay Cree agreement on schedule 2?

Ms. Christine Loth-Bown: I'm saying that section 4, which outlines the ability to create schedule 2, should this piece of legislation be passed, offers the opportunity to have those discussions with the James Bay Cree or the Inuvialuit or other modern treaty and land claim....

The Chair: I think that's very helpful.

Ms. Linda Duncan: Well, I don't think so.

The Chair: I appreciate that clarification.

Shall the amendment carry?

Hon. Ed Fast: I call for a recorded vote.

The Chair: Okay.

(Amendment negatived: nays 8; yeas 1 [See *Minutes of Proceedings*])

Ms. Linda Duncan: I said yes, because I have no assurance that it will be on schedule 2, and neither have the Cree.

The Chair: Next up is amendment NDP-18. If it's adopted, then amendment LIB-5 cannot be moved, because there will be a line conflict.

Linda.

Ms. Linda Duncan: Madam Chair, the first part deals with line 7 on page 9, and it is changing "to foster sustainability" to "to ensure sustainability".

I don't know whether you want to vote on these as we go along or as a package.

The Chair: No, just go ahead. Explain what you want to explain. We're going to vote on your amendment, all of it.

Ms. Linda Duncan: This is also adding to line 9 the word "cultural" again. Then it is replacing lines 7 and 8 on page 10—

The Chair: Hold on. What one are you looking at right now?

Ms. Linda Duncan: I'm looking at amendment NDP-18.

The Chair: So am I, but I'm not following you. I'm following "replacing line 7 on page 9 with the following":

> "(a) to ensure sustainability,"
>
> (b) by replacing lines 7 and 8 on page 10 with the following:
>
> "(j) to ensure that an impact assessment

Is that what you are reading? Am I missing something?

Ms. Linda Duncan: What I did was add from the floor. I can take out the added part, if you want to put it later.

The Chair: You did what?

Ms. Linda Duncan: I added that additional amendment from the floor. It's not written into the amendment.

The Chair: Oh, you just need to let us know what you're doing. I wasn't aware.

Ms. Linda Duncan: Okay, I'm sorry.

The Chair: What are you doing?

Ms. Linda Duncan: I was adding to line 9 the word "culture".

The Chair: Where?

Ms. Linda Duncan: It's between "social" and "and".

The Chair: In "social and economic", are you putting "culture" in after "social"?

Ms. Linda Duncan: That's correct.

The Chair: That is in proposed paragraph 6(1)(b).

Ms. Linda Duncan: Yes.

Then paragraph (b) in my amendment is replacing lines 7 and 8 on page 10 with the following: "(j) to ensure that an impact assessment is based on sound science and takes into account...".

Here, I am changing the wording, and I will tell you why I am changing it. I will read this one from the floor as well. I'll say it slowly so that we get the interpretation for our francophone friends.

These lines will read, "to ensure that an impact assessment is based on sound science and takes into account the best technologies available to reduce environmental impacts...".

The reason I am using those specific words is that I am taking them straight out of the Prime Minister's mandate letters to the Minister of Natural Resources and the Minister of Environment and Climate Change. Those two letters mandate that the two ministers must "ensure that decisions are based on science, facts, and evidence and serve the public's interest"—

The Chair: Say it again, Linda, please, because I think people are trying to write while you are saying it.

Hon. Ed Fast: I know what she's doing.

Ms. Linda Duncan: I'm reiterating what the mandate letters say.

Hon. Ed Fast: We don't have them in front of us.

Ms. Linda Duncan: You don't have them in front of you, but I'm reading this slowly.

The Chair: Can you read it again, please?

Ms. Linda Duncan: The mandate letter to the Minister of Natural Resources states that he will:

> ensure that decisions are based on science, facts, and evidence, and serve the public's interest; [and]
>
> require project proponents to choose the best technologies available to reduce environmental impacts.

The Chair: You're not including that in the bill. That's just the justification.

Ms. Linda Duncan: I'm not. I'm just telling you why this is being submitted.

The Chair: Okay, but what you're actually—

● (1615)

Ms. Linda Duncan: I could provide this to the analysts.

The Chair: No, that's fine. This gives an explanation. Ed was trying to actually get it into a script.

It's for proposed paragraph 6(1)(j).

Hon. Ed Fast: I got it.

The Chair: Okay, good.

Ms. Linda Duncan: My paragraph (c) would propose three additional paragraphs after line 27 on page 10:

> (o) to contribute to achieving and maintaining a healthy and stable climate for future generations;
>
> (p) to ensure environmental justice by ensuring that designated projects do not have a disproportionate negative impact on Indigenous peoples or on other groups distinguished on the basis of grounds including race, colour, national origin or income; and
>
> (q) to ensure adherence to or compliance with related regional agreements and international obligations and commitments.

The Chair: Are you finished, Linda?

Ms. Linda Duncan: Yes.

The Chair: Mr. Fast.

Hon. Ed Fast: Madam Chair, at our last meeting, right at the beginning when we were dealing with, I believe, the preamble.... We were dealing with an amendment, in any event, in which we had a number of subclauses included in the amendment. We dealt with each one of them separately. Do you remember that?

The Chair: Yes, but that's because she actually broke them out. We were dealing with them in the way they broke them out.

Hon. Ed Fast: Exactly. Now Ms. Duncan asked if she could break these out.

I believe that was her request, wasn't it?

Ms. Linda Duncan: It was, yes.

Hon. Ed Fast: There are a number of these that we would be prepared to support, but collectively we can't support the amendment.

The Chair: To expedite, I'm happy to break them out, if that's what you'd like to do, then.

Ms. Linda Duncan: I seem to be the only one for whom the drafter preferred to put everything together, so I apologize, but that's the way they were drafted.

Hon. Ed Fast: No, that's fine.

Ms. Linda Duncan: I'd prefer that they be voted on separately.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): No, we have a motion on the floor, so no. We have a motion on the floor.

The Chair: No, you have an amendment that she's brought forward. She has amended it on the floor. She's asked for it to be split—on the floor—which she can do.

Mr. Mike Bossio: Okay.

The Chair: She can do that.

I'm going to go bit by bit, then.

The question is on amendment NDP-18(a), which is replacing line 7 on page 9 with the following:(a) to ensure sustainability;

Hon. Ed Fast: I call for a recorded vote.

The Chair: Okay. I didn't even get the question out yet.

(Amendment negatived: nays 5; yeas 4)

The Chair: Now we have a new amendment, NDP-18(a.1), which is to add the word "culture" to line 9.

Do I need to say anything else, or is that clear enough?

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): Isn't that part of amendment NDP-18(b)?

The Chair: The line would read:

> and the health, social, cultural and economic conditions that

Shall that amendment carry?

Hon. Ed Fast: Could I have a recorded vote?

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 8; yeas 1)

The Chair: Now we're at amendment NDP-18(b), "replacing lines 7 and 8 on page 10 with the following", which is the proposed replacement paragraph 6(1)(j).

You changed it, so can you read it again? We'll make sure we get it.

It is:

> to ensure that an impact assessment is based on sound science and takes into account

Ms. Linda Duncan: It goes on:

> the best technologies available to reduce environmental impacts

—specifically from the mandate letters.

The Chair: Do you stop at, "the best technologies available to reduce environmental impacts"? Is that it?

Ms. Linda Duncan: And a period, yes.

The Chair: Okay. Do we have it?

Mr. Robert Sopuck: Can we speak to this?

The Chair: Well, we did already, so we're going to vote on the amendment.

● (1620)

Hon. Ed Fast: Let's have a recorded vote.

(Amendment negatived: nays 8; yeas 1)

The Chair: Next up is amendment NDP-18(c), "adding after line 27 on page 10 the following:" and she's adding three new paragraphs: proposed paragraphs 6(1)(o), (p), and (q). There are no changes in those from what we have in front of us.

Shall that amendment carry?

Hon. Ed Fast: I'd like a recorded vote.

The Chair: It's a recorded vote.

(Amendment negatived: nays 8; yeas 1)

The Chair: We move on now to amendment PV-8.

Ms. May.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Madam Chair, this amendment is one that was recommended by the Assembly of First Nations. It's quite critical to understand the impact of the words that are currently found on page 9 in proposed paragraph 6(1)(e), which deals with the

> coordinated action between federal and provincial governments, and the federal government and Indigenous governing bodies

The draft that we have for first reading qualifies the words "Indigenous governing bodies" with the words "that are jurisdictions". The impact of that is to provide that those first nations that are allowed to participate in more coordinated action with the federal government are only those that have entered into agreements as outlined. The existing definition of "jurisdiction" would restrict the indigenous governing bodies that were allowed to enter into agreements.

In accordance with the Assembly of First Nations' recommendations, therefore, my amendment removes the words "that are jurisdictions" so that this paragraph (e) would read, in lines 25 and 26:

> federal government and Indigenous governing bodies with respect to impact assessments;

Then it goes on to paragraph (f).

The Chair: Okay, I think that's clear.

Shall the amendment carry?

Hon. Ed Fast: Let's do a recorded vote.

The Chair: It's a recorded vote.

(Amendment negatived: nays 8; yeas 1)

The Chair: We are on amendment PV-9.

Ms. Elizabeth May: This is another recommendation from the Assembly of First Nations. Commendably, this bill deals with indigenous knowledge, traditional knowledge, and so on, and with giving recognition and respect to that kind of information as being important to impact assessment.

As we heard from testimony from the Assembly of First Nations, it is important to recognize that in communication and co-operation with indigenous peoples there be respect for sensitive information.

To give you an idea of this, quite often when working with indigenous communities there can be areas that are known for medicinal plants. They are specific areas that are culturally and often spiritually important. Once located and identified in communication with governments, indigenous peoples and their governments have reason to be concerned that those particular sensitive areas and that information could lead to the destruction of these particular sites or intrusion into the gathering of medicinal plants by indigenous people.

That's just one example to explain why this amendment that I'm proposing inserts the language "while protecting sensitive information" into the bill's phrase "cooperation with Indigenous peoples".

The Chair: Just so that I understand, line 31 on page 9 at the moment says, "to ensure respect for the rights of the Indigenous peoples of Canada", and you want to change that to "protect the rights of the Indigenous—

Ms. Elizabeth May: Oh, wait, have I—?

The Chair: Oh, I'm on the wrong one. I'm sorry. I'm getting ahead of myself.

Ms. Elizabeth May: It's okay. I can imagine and can only sympathize with your enthusiasm for my next amendment.

Some hon. members: Oh, oh!

The Chair: Thank you.

Now that I'm on the right page, Ed, would you like to make a comment on the amendment?

Hon. Ed Fast: Yes, I want to make a comment.

Is it Ms. May's intention for the sensitive information to be available to proponents of projects, or would this be withheld from them?

Ms. Elizabeth May: The intention in doing an impact assessment, I would assume—well, I'm not assuming, if you're entering into a mispurpose of the act—is, in this proposed paragraph 6(1)(f):

> to promote communication and co-operation with Indigenous peoples of Canada with respect to impact assessments;

It's clear that what we want to do is also protect sensitive information. I can't imagine that, in that context—this is guidance in the purpose of the act, so in the context of an impact assessment—this information would be known to the proponent, but they would also have to regard it as sensitive information and protect it from publication.

It's guidance in the purpose. I think it would be a matter of co-operation and discussion in each instance with each indigenous governing body.

● (1625)

The Chair: Mr. Amos.

Mr. William Amos: We don't support this amendment, but we appreciate the direction that Ms. May is attempting to bring us in terms of ensuring the appropriate use and protection of indigenous knowledge in all acts in the bill.

There are a bunch of relevant government member motions that either have been brought or will be brought, in particular, amendment LIB-4, which provides a definition of indigenous knowledge, and amendments LIB-20, LIB-38, and LIB-39, which require reports to set out how indigenous knowledge is used and also ensure that this knowledge is protected.

Amendments LIB-63, LIB-125, and LIB-88 would require that, before indigenous knowledge is disclosed, the minister will consult the person or entity who provided it as well as the person or entity to whom it would be disclosed—this is going, a bit, to Mr. Fast's comment.

Amendments LIB-65, LIB-126, and LIB-89 would allow for conditions on the disclosure of indigenous knowledge in light of consultations with the person or entity who provided it, as well as the person or entity to whom it would be disclosed.

That's all on top of the number of motions to change terminologies in the bill from "traditional" to "indigenous" knowledge. We're confident, as government members, that we're engaging on this indigenous knowledge issue in a comprehensive manner and we're confident that it's going to be incorporated appropriately.

The Chair: Okay.

Ms. Elizabeth May: Madam Chair, may I comment?

The Chair: Very quickly.

Ms. Elizabeth May: I would just say to Liberal members of the committee that inserting this language in the purpose section—since we don't know how your amendments will go later on—should buttress your arguments when we get to your amendments, because it's all very consistent and takes nothing away from yours, but anchors it in the act.

Thank you.

The Chair: Shall the amendment carry?

Hon. Ed Fast: Let's have a recorded vote.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: Now we're on to the one that I thought we were on—

Ms. Elizabeth May: I am edging up here on the score. We've gone from one NDP to getting three Conservative votes. Now, on this next one, I'm sure we're going to get everybody, because we're in this friendly area called Mr. Rogers' neighbourhood. I'm moving into it here.

Some hon. members: Oh, oh!

Hon. Ed Fast: She's coming after you, Churence.

Ms. Elizabeth May: I'm looking at paragraph (g). If you have your eyes on paragraph (g) on page 9 under proposed subsection 6 (1), I want to change the language from "to ensure respect for the rights of the Indigenous peoples of Canada". This is our mandate at the federal government level. We have a fiduciary responsible not to ensure respect but to protect the rights of the indigenous peoples of Canada.

I'm not going to belabour how many witnesses we heard this from, but I would be so gratified if this could carry. It should be where we all stand—not to ensure respect, but to protect the rights.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 7; yeas 1 [See *Minutes of Proceedings*])

The Chair: We already voted on amendment PV-11.

Amendment NDP-19 needed to be split. We're on amendment NDP-19(a).

Linda.

Ms. Linda Duncan: Does mine go before PV-11?

The Chair: Just a minute. Hang on, Linda. I just want to bring everybody....

Amendment PV-11 was voted on.

I had grouped some together, and that was the only time I was able to do so until I agreed with Mr. Fast that we would go one by one.

Given that amendment NDP-19 is to be split, we are now at amendment NDP-19(a).

● (1630)

Ms. Linda Duncan: Okay. The first part of that is line 33 on page 9, and again would add in the reference after "Constitution Act, 1982," to "the United Nations Declaration on the Rights of Indigenous Peoples, adopted on September 13, 2007".

The Chair: We're back to a discussion similar to a previous one.

Ms. Linda Duncan: Do you want to discuss and vote or do you want to go through them all and then—

The Chair: I tried to group them—

Ms. Linda Duncan: No, I know—

The Chair: —and it was suggested that we don't.

Ms. Linda Duncan: —but do you want to just vote?

The Chair: Let's just vote and get it done.

Ms. Linda Duncan: We're just voting on each one as we go through.

The Chair: Shall that amendment carry?

Hon. Ed Fast: A recorded vote, please.

The Chair: It will be a recorded vote.

(Amendment negatived: nays 8; yeas 1)

The Chair: Because we are going line by line, now we are going to move to amendment LIB-5. We are still on lines 8 and 9 on page 10, which comes next. That's before we go to paragraph (b), which is on line 12.

On amendment LIB-5, Mr. Bossio.

Mr. Mike Bossio: Chair, once again, this goes to the discussion we had numerous times yesterday in the previous session around changing "traditional knowledge" to "Indigenous knowledge", as it reflects a lot of testimony that we heard in this area.

The Chair: Shall the amendment carry?

Hon. Ed Fast: A recorded vote.

The Chair: It will be a recorded vote.

(Amendment agreed to: yeas 8; nays 0 [See *Minutes of Proceedings*])

The Chair: All right. That's passed.

Ms. Linda Duncan: Madam Chair, I just want to say that as before, I abstained because it doesn't seem to comply with what the indigenous witnesses called for, but I haven't had a chance to follow up with them.

The Chair: Next up, we are back to amendment NDP-19(b).

Linda.

Ms. Linda Duncan: It's on page 10, at line 12. Right now, the provision simply speaks to taking "into account alternative means of carrying out" the "designated project", and my amendment would add in "alternative means of serving an identified need or carrying out" the "designated project".

The reason I say this is that my experience before tribunals is.... Let me use as an example the review of the Site C dam. Many people felt that it was giving short shrift to evidence that was given showing that the needed electricity of the future could be equally served by geothermal and solar through a private proponent and an indigenous proponent. That was not given serious weight. Of course, those kinds of hearings in the future presumably would be joint federal-provincial ones, and I think it's very important that there be consideration of alternative ways of meeting the need, in terms of why they're saying they need to have the project approved.

The Chair: Shall amendment NDP-19(b) carry?

Hon. Ed Fast: A recorded vote.

(Amendment negatived: nays 8; yeas 1)

The Chair: Next is amendment NDP-19(c).

Linda.

Ms. Linda Duncan: Again, this is on page 10. It's replacing lines 16 to 20. It's making sure that projects, as defined in section 81:

> "or other activities"

This is the important point, the activities—

> "carried out in accordance with this Act, that are to be carried out on federal or Indigenous lands"

—of course that was ruled out—

> "or that may impact Indigenous rights and that may be subject to a federal authority or financially supported by a federal authority, are carried out in a manner that avoids significant adverse effects;"

It expands proposed paragraph (l).

There were great concerns submitted by a lot of witnesses that this bill is going to severely reduce what matters will be reviewed federally and is limited only to projects likely on the project list. They are saying that we need to have "other activities", such as consideration of whether to approve the Olympics in Banff National Park. It is not necessarily a physical project but an approval that may impact an area subject to federal jurisdiction responsibility.

● (1635)

The Chair: Okay, I think that's clear.

Shall the amendment carry?

(Amendment negatived: nays 8; yeas 1)

The Chair: Amendment LIB-6 has been withdrawn. That's not being considered for line 20.

Mr. Linda Duncan: There is still one more clause.

The Chair: Remember that you split it, so I'm going line by line.

We're on NDP-19(d), which is talking about line 27.

We're going line by line, Linda. Go ahead.

Ms. Linda Duncan: I'm deeply concerned, as a former environmental enforcer, with the language in (n), on page 10, line 27. It says:

> to encourage improvements to impact assessments through the use of follow-up programs.

I don't know what that is. I don't know if that's ever stated in law or anywhere else. My proposal is to say:

> through the exercise of federal regulatory and enforcement powers and the use of follow-up programs.

The Chair: The question is on follow-up programs. Would one of those at the table want to explain that if there is any mis—

Ms. Linda Duncan: Does that exist in law anywhere?

The Chair: Does somebody want to talk to that?

Mr. Brent Parker (Director, Legislative and Regulatory Affairs Division, Canadian Environmental Assessment Agency): I can speak to that.

To understand the question, it's does the follow-up program exist in the legislation?

It does. There's requirement for a follow-up. That follow-up is an obligation that will come out of the decision statement conditions. There has to be a follow-up program, and then that follow-up program has conditions associated with it. That is implemented by the responsible authority under this act. It would be the impact assessment agency.

Ms. Linda Duncan: Is it not an important addition to this law, which was one of the things the government said they would include, to start having enforceability of conditions?

I don't consider that a follow-up program is ensuring compliance of the conditions that are imposed. A follow-up program does not cover the rest of the provisions of the bill. There might be regulatory measures and enforcement measures.

Mr. Brent Parker: There are other sections of the bill that speak to that. There are conditions. They are enforceable. They come out of the decision statement that the minister would issue at the end of the public interest test if the project were approved.

There is a section that begins in proposed section 120 that lays out the specific provisions around enforceability and compliance associated with those.

Ms. Linda Duncan: Again, this is the beginning part of the bill that talks about the purposes. It would be my understanding that one of the purposes of this bill is that in order to ensure compliance and adherence to the conditions, we will now have provisions to do with enforcement. We will exercise federal regulatory enforcement powers.

You can decide not to support it, but it's part of the bill that's been added in that wasn't there before.

The Chair: I think the explanation was given.

Do you want to add anything to that?

Mr. Brent Parker: The only thing I would add is that there is a current follow-up program under CEAA 2012 as well. That specific point about it in the purpose arises here, but the follow-up program actually exists currently.

● (1640)

The Chair: Mr. Fast.

Hon. Ed Fast: I have a very quick question, Mr. Parker.

A follow-up program is not an enforcement program, correct?

Mr. Brent Parker: Correct.

Hon. Ed Fast: Thank you.

We're dealing with the purposes. We have a list of the things that reflect the purposes of this bill: "to foster sustainability; protect the components of the environment, and the health, social and economic conditions that are within the legislative authority of Parliament from adverse effects", ensure impact assessments are properly done; "promote cooperation and coordinated action".

The one thing that's missing is actually enforcement of the laws that the government has passed and the regulatory scheme. The biggest complaint I hear from Canadians about the application of Canadian laws is when those laws are not enforced, or not enforced sufficiently to make a difference in the lives of Canadians.

I'm surprised. This is an eminently sensible amendment to propose, one that the Liberals shouldn't fight.

The Chair: We just heard an explanation, so maybe, Mr. Parker, you could repeat where that comes in.

Hon. Ed Fast: I did hear it.

The Chair: Okay.

Ms. Christine Loth-Bown: Perhaps I could just add that as part of the legislation, conditions of decisions and statements are enforceable. A follow-up and monitoring program could be a condition of a decision statement, and those are enforceable.

Hon. Ed Fast: I certainly acknowledge that they're enforceable. Whether they are enforced is a different matter altogether. The biggest complaint I hear in my office is when Canada's laws are not enforced or not enforced sufficiently. I think this, as a stated purpose within the bill, is eminently sensible. Canadians expect their governments to enforce the laws and regulations that they pass.

The Chair: It's a good discussion.

Ms. Linda Duncan: I rest my case. Part of doing the environmental impact assessment process is to identify where there may be significant impacts. Then there will be conditions attached, and some of those conditions will require that federal authorities exercise their regulatory powers. There's a whole part of this act as well called "Administration and Enforcement", sections 120 to 151, and I just simply thought that it's part of the act that should be referenced. If we don't want to talk about the regulation and enforcement, so be it.

The Chair: Shall the amendment carry?

Hon. Ed Fast: I'd like a recorded vote.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: Now we're on LIB-7.

Mr. Amos, go ahead.

Mr. William Amos: Madam Chair, this is an amendment that would seek to amend the mandate subsection of the purposes section with a view to working towards better enhancing our commitment to the United Nations Declaration on the Rights of Indigenous Peoples.

We heard many, many comments from indigenous representatives and organizations, and this is one of a series of four amendments that I'm bringing on this subject. It really goes straight to that bottom-line issue of respecting the federal government's commitments with respect to the rights of indigenous peoples of Canada.

The Chair: Shall the amendment carry?

Mr. Robert Sopuck: I'd like a recorded vote.

The Chair: Okay.

(Amendment agreed to: yeas 5; nays 3 [See *Minutes of Proceedings*])

The Chair: Next up is amendment PV-12.

Ms. May, go ahead.

Ms. Elizabeth May: Madam Chair, it's been a while since you heard from all the witnesses, but I just want to preface this by saying that this amendment comes from the expert advice, from Professor Martin Olszynski, who is one of the pre-eminent experts in environmental impact assessment in Canada. He's at the University of Calgary's faculty of law. He's provided some examples in his evidence of where the words "scientific integrity" have been used in other jurisdictions. In particular, the U.S. Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act require that U.S federal agencies ensure "the professional integrity, including scientific integrity, of the decisions and analyses in environmental impact statements".

The U.S. Geological Survey similarly has a section on scientific integrity which says that those employees of the geological survey "communicate the results of scientific activities clearly, honestly, objectively, accurately, thoroughly" and expeditiously.

You might think that this is automatic and that anyone doing scientific work is going to report it honestly and ethically and that scientific integrity will matter to any government, but there's a pattern. It's been discussed in some recent news articles, and I've seen it myself over the years in environmental assessment. Consultants hired by the proponent can put pressure on or even add it after the fact to the reports that were done by scientific researchers. The word "devastate" for instance can be edited to "alter". That's a real life example.

This would be a new subsection 6(3) to be found in the mandate section. There is a subsection 6(2), which I leave unchanged. Subsection 6(3) would say:

(3) That the Government of Canada, the Minister, the Agency and federal authorities must, in the administration of this Act, exercise their powers in a manner that adheres to the principles of scientific integrity, honesty, objectivity, thoroughness and accuracy.

I'm sure the government of the day absolutely supports this. You might think it's redundant, but believe me, and if you don't believe me, please believe Professor Olszynski. This is really important if we can add this in.

Thank you.

● (1645)

Ms. Linda Duncan: I want to speak to that.

The Chair: Okay.

Ms. Linda Duncan: I'm so glad that Ms. May has tabled this, because if she hadn't, I was going to table a slightly different version.

We have received briefs from a number of scientists in Canada—unfortunately, after we had to submit amendments—who are deeply concerned that there's a lack in terms of reflecting scientific integrity in this bill. There are a lot of concerns with the way impact assessments have been proceeding, and that's what's causing a lot of people to get arrested.

Professor Olszynski has pointed out to me why he has used the wording he has. I thought it was a bit extreme, but it's very important that we know why he has put this in.

We actually signed the North American Agreement on Environmental Cooperation. It's a sidebar agreement to NAFTA. In that agreement, we agree to co-operate and to work with our partners, the United States and Mexico, to have harmonized policies.

The United States passed these rules some time ago. The Council on Environmental Quality regulations of 1978—a long time ago—for the National Environmental Policy Act required that federal agencies ensure "the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements". I can give this information to the analysts.

Also, the U.S. Geological Survey Manual, in chapter 500.25, titled "Scientific Integrity", at paragraph 7 requires United States government employees to "communicate the results of" their "scientific activities...honestly, objectively, thoroughly" and expeditiously.

This is common language for our trading partner to the south, so I think it's a very sensible recommendation to be included in the bill.

The Chair: Thank you.

Mr. Sopuck.

Mr. Robert Sopuck: I think this one makes a lot of sense. Back in a previous life, I had to administer environmental licences and send test results to the relevant authorities, and numbers, hopefully, don't lie. If you do your job correctly—

Hon. Ed Fast: Kumbaya.

Voices: Oh, oh!

Mr. Robert Sopuck: We don't need Kumbaya.

The Chair: We need data.

Mr. Robert Sopuck: We need data, absolutely, and I find that data is sorely lacking in much of these environmental debates. I think this side is very much inclined to support this.

The Chair: Shall the amendment carry?

Hon. Ed Fast: A recorded vote.

(Amendment agreed to: yeas 9; nays 0 [See *Minutes of Proceedings*])

The Chair: That carries. Congratulations. Well done.

Let's move on to NDP-20.

Actually, wait a minute. This one was dealt with under NDP-4, so this is already done.

● (1650)

Ms. Linda Duncan: I think only one part of it.

The Chair: Not according to the legislative clerk. We'll take one quick look and make sure.

Ms. Linda Duncan: I still disagree with why they would argue that. I mean, I lost that one, and therefore that wasn't changed, and therefore this should be valid.

The Chair: Well, yes....

Ms. Linda Duncan: There is no change, and therefore I should be able to propose this alternative.

The Chair: Yes, it didn't get....

Ms. Linda Duncan: If you had accepted that amendment, it might have made a difference, but you did not accept the amendment.

The Chair: Okay. Let's do it. Go ahead.

Ms. Linda Duncan: This is a provision related to the transportation of dangerous goods, which I've also already tabled in the House. It is a matter of great consternation to a lot of the Canadian public that, under the existing provision in law, even though the minister has long had the power for discretion to call an assessment where there is public concern, or where information comes to her attention that there may be significant adverse effects, she has never used the power.

The recommendation is to make that mandatory. I see no logical argument for where information has been brought to the attention of the minister that the project may cause significant adverse effects that she does not have to call a review.

If that's not the case, it basically makes this bill the "let's not have federal assessment" bill, because every other provision simply gives them the discretion. If an authority has decided that we don't need to have an assessment, well, there can't be an assessment. If they want to have somebody else do the assessment, we won't do a federal assessment.

This is the only occasion where we will know for sure that there will actually be a federal assessment: because the minister has been apprised of the fact that there may be significant effects from the project. I find it very hard to find any logical reason not to say it in that way.

The Chair: Do you intend for us to do each of these pieces separately? Is that what you're trying to do?

Ms. Linda Duncan: I can speak to them all together, if you like.

The Chair: Sure. Go ahead.

Then you have page 13, line 9 as the next one.

Ms. Linda Duncan: I'm looking at the opposite. Sorry. Oh, I'm already tired, and we've only been here one hour.

Let's just deal with this one.

The Chair: Shall that amendment—

Hon. Ed Fast: Hold on. I want to be on the speaker's list.

The Chair: Go ahead.

Hon. Ed Fast: This is a guaranteed way of chasing away investment in Canada. Basically, you're compelling the minister to order an assessment "when there are public concerns or when information is otherwise brought to the Minister's attention". It doesn't stipulate the gravity of those concerns or the science that backs up those concerns. If somebody comes forward and complains, those are concerns. They complain and say, "Hey, I have a concern about a particular project; there will be some adverse effects." Remember, the wording is "may" cause significant adverse effects.

If one person comes forward, the minister must act. The minister, in a situation like this, needs to have the discretion available to assess the seriousness of a complaint about a project and the cumulative effect of a number of complaints on a project.

It goes back to ministerial discretion. I don't believe that we should have ministerial discretion as a rule, but there are times when it makes eminent sense for a minister to have that discretion, so that you don't have situations where projects that really should not have to undergo an impact assessment by any stretch of the imagination suddenly have to, and incur all those additional expenses that will likely chase away that particular investment.

The Chair: Thank you very much.

Hon. Ed Fast: I'd like a recorded vote.

The Chair: Yes, a recorded vote.

(Amendment negatived: nays 8; yeas 1 [See *Minutes of Proceedings*])

● (1655)

Ms. Linda Duncan: There is no point in moving NDP-20(b) and NDP-20(c) because they're related, too.

The Chair: Fair enough. That's why I wondered if you wanted to do them all, but okay. That's good. This amendment NDP-20, in its entirety, did not carry.

Thank you.

PV-13 was done before, so that's out.

Ms. Elizabeth May: Yes.

The Chair: On NDP-21, go ahead, Linda.

Ms. Linda Duncan: Yes.

The Chair: It's really very similar.

Ms. Linda Duncan: Well, it's the same again. Page 13, line 5—

The Chair: Yes, it's just where it showed up again.

Ms. Linda Duncan: I am again adding in the United Nations Declaration on the Rights of Indigenous Peoples as a factor that she must take into account. It seems logical.

The Chair: Okay. Thank you very much.

Mr. Robert Sopuck: I'd like a recorded vote.

(Amendment negatived: nays 8; yeas 1 [See *Minutes of Proceedings*])

The Chair: Ms. Duncan, do you want to do NDP-22?

Ms. Linda Duncan: Sure.

The Chair: We're now on page 13, line 34.

Ms. Linda Duncan: This would add a line after line 34. It's adding a proposed subsection 9(9) to say, "The Minister may designate a physical activity where a federal authority is required to make a determination under sections 82, 83 or 84."

That's making up for the fact that we don't have the law list anymore. It empowers the minister to designate a physical activity for impact assessment where the project is on federal land or federally financed. Currently where the projects are on federal lands, the federal agency has been sidestepping impact assessment, and I'm advised, from a CPAWS study done on decisions between 2012 and 2018, that 500 determinations were issued refusing to do an assessment, even an initial assessment.

I note that the minister made a commitment yesterday to maintaining integrity in the national parks and to ensuring that all impacts on our national parks, and presumably world heritage sites, will now be included. That means we need to put through this amendment, because we have to include things like the Olympics, with which there is some kind of an activity for which federal authority might be required.

The second aspect is that right now that provision, I believe, says that the agency can make that decision. I think the minister should be making that decision, not the agency.

The Chair: Okay.

Mr. Robert Sopuck: I would like to have a recorded vote.

(Amendment negatived: nays 8; yeas 1)

The Chair: We're on amendment NDP-23.

Linda.

Ms. Linda Duncan: I am deeply concerned, as are probably the vast majority of witnesses we heard from as well as the more than 150 who submitted briefs, that public participation rates are given short shrift in this bill. It just isn't adequate to say that the public has a right to participate.

I looked at other federal legislation. I looked at the Canadian Environmental Protection Act, which our committee looked at previously, and, lo and behold, there's a whole section right at the beginning with the heading " Public Participation". That act lists all the rights and opportunities of the public to participate, and the duties of the government to deliver those rights.

This bill as it stands right now is completely user-unfriendly to the ordinary person trying to determine their rights and opportunities to participate in these processes, to trigger a review, to gain access to information, to be able to present evidence, or to be able to cross-examine. Therefore, I have suggested that all the rights and opportunities listed throughout the act be moved forward to a proposed new section 9.1 under the heading "Public Participation", and that is what I have listed in here.

I tried to be all-encompassing. I've tried to list right upfront everything from participating in the planning stage to being able to be consulted on development or the amending of schedule 3, to requests made by the agency for additional information that get notice, decisions as to whether an impact assessment is required or directing the agency not to conduct an impact assessment, to decisions by the minister, decisions made by the agency to conduct an impact assessment, decisions made by the minister not to conduct an impact assessment, the right to receive notice of a determination by the minister, and so on and so forth.

I've done my best to go through and, anywhere that a public right has been extended, to move that up front in the bill so that it becomes more user-friendly to the public.

● (1700)

The Chair: Thank you very much for that.

Mr. Darren Fisher: Are we breaking these down?

The Chair: No, because—

Ms. Linda Duncan: The whole purpose is that it's a bundle. They're not new rights. They're rights that are buried in the act.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 8; yeas 1)

The Chair: Now we're on to amendment PV-14.

Ms. May.

Ms. Elizabeth May: Madam Chair, both PV-14 and PV-14.1 move into the sections about the proponent's obligation to describe the project in a certain way. That's found on page 14, subsection 10 (1).

Again we've had expert advice, particularly from the Canadian Environmental Law Association, and we want to make sure that early in the planning stage there should also be a detailed description of the reasonable range of alternatives. My proposed amendment is based on the advice of the Canadian Environmental Law Association.

The new section would read:

> The proponent of a designated project must provide the Agency with an initial description of the project that includes the information prescribed by regulations made under paragraph 112(a) as well as a description of the alternatives to the project considered by the proponent.

The other changes are consequential to that.

Thank you, Madam Chair.

The Chair: Thank you very much.

Mr. Sopuck.

Mr. Robert Sopuck: I am steadfastly opposed to this one. A private sector entity does the appropriate economic analysis and decides on a project. What this says is that bureaucrats are going to basically overrule a private sector proponent who has decided to invest their private money in a manner that will generate a return for shareholders and the country at large. This is the ultimate in bureaucratic interference, and this side is strongly opposed to it.

The Chair: Shall the amendment carry?

Mr. Robert Sopuck: A recorded vote.

(Amendment negatived: nays 8; yeas 1)

The Chair: Now we're at PV-14.1. It's an insert to another one.

Go ahead, Ms. May

Ms. Elizabeth May: The point in subsection 10(2), where a copy of that description is posted on an Internet site, allows for a one-page summary of the project, and its precise location is to be posted on the Internet site. This is to provide more usable information to the public at large, because right now the agency must post a copy of the description on the Internet site.

Amendment PV-14.1 merely makes sure that its precise location is also included, and that for 60 days after the day on which the agency receives the information, so it also extends the period of time in which the public has access to that information on the website with the better information and the better location.

I think it's pretty clear. I hope it's acceptable.

● (1705)

The Chair: I think that's very clear.

Go ahead, Mr. Fast.

Hon. Ed Fast: Madam Chair, we're going to support this.

Again, this is an eminently sensible addition to the requirements that a proponent would have to comply with, and it provides the public with a succinct description of the project, the location of the project, and enough time to consider it. I think it's sensible.

Ms. Elizabeth May: Thank you.

The Chair: Shall the amendment carry?

Mr. Robert Sopuck: A recorded vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: We're moving on to NDP-24.

Ms. Linda Duncan: This is on page 14, replacing lines 8 to 11 to be more specific:

> The Agency must ensure the public is provided with opportunities to participate meaningfully

My understanding is we all agree with that:

> in its preparations for a possible impact assessment of a designated project, or an assessment under section 92, 93 or 95

That includes impact assessments, regional assessments, and strategic assessments:

> including by inviting the public to provide comments within the period that it specifies and in accordance with the regulations.

We don't know what this planning phase will apply to. If it's sensible, it makes sense to apply that to decisions on whether we need a regional assessment or a strategic assessment. I think it's important that those be referenced right up front.

The Chair: Shall the amendment carry?

Mr. Robert Sopuck: A recorded vote.

(Amendment negatived: nays 7; yeas 1 [See *Minutes of Proceedings*])

The Chair: Next up is LIB-8.

Mr. Bossio.

Mr. Mike Bossio: Thank you, Chair.

I've been pushing for some time for meaningful public participation, something that is not just a box-checking exercise. This amendment would help clarify and strengthen the government's commitment to meaningful public participation. As you've heard many times in this committee, I've been involved in this environmental assessment on numerous occasions and meaningful public participation is something that is vitally important to the process in order to achieve public trust.

I move this amendment.

The Chair: Let's have a recorded vote.

(Amendment agreed to: yeas 8 ; nays 0 [See *Minutes of Proceedings*])

The Chair: Now we have CPC-0.1.

The floor is yours, Mr. Sopuck.

Mr. Robert Sopuck: This amendment would ensure that all the appropriate levels of government, be they towns, villages, or municipalities, would be invited to participate in these assessments, which I think is only reasonable. We learned in our last meeting that municipalities are legal entities.

Ms. Linda Duncan: Madam Chair, isn't this the same as the ones I put forward from the FCM that were voted down?

The Chair: No, it's not. It's in a different place, so it's different. Fair enough? We'll move forward.

I want to make sure that you know that if we reject this amendment, amendment CPC-1.2 won't be able to be moved, because it's on the same thing.

Shall amendment CPC-0.1 carry?

Hon. Ed Fast: A recorded vote.

(Amendment negatived: nays 5; yeas 3 [See *Minutes of Proceedings*])

The Chair: That did not carry, which means that CPC-1.2 is not going to be moved, because it references that one.

Next is amendment CPC-1.

Mr. Sopuck.

● (1710)

Mr. Robert Sopuck: I'll withdraw it.

The Chair: Thank you.

We are on amendment PV-15.

Ms. Elizabeth May: This is from the Assembly of First Nations. The current description of the agency's obligation and offer to consult found in section 12 under the planning phase obligations is "the Agency must offer to consult with any jurisdiction", and that would include municipalities as well as indigenous jurisdictions.

The proposal is to add the words "and share information", so the sentence would now read, "The Agency must offer to consult and share information with any jurisdiction".

Some might think it's implied that if you consult, you share information, but this would clarify and ensure that any jurisdiction consulted by the agency was provided with all the relevant information that the agency has when it enters into a consultation.

The Chair: Mr. Fast.

Hon. Ed Fast: I'm going to support this proposal. My big concern has been that the current government actually doesn't share information when it should. We request it, and we get documents back, and the documents are fully redacted. If consultation is supposed to be effective and meaningful, it has to be a sharing of information. I strongly support this.

The Chair: Mr. Amos.

Mr. William Amos: There are many other provisions in this bill that adequately provide conditions and safeguards for information sharing, so we are in a good place already on this issue, and the sharing of information is going to happen pursuant to the—

The Chair: Shall the amendment carry?

Hon. Ed Fast: A recorded vote.

(Amendment negatived: nays 5; yeas 4)

The Chair: On PV-16, Ms. May.

Ms. Elizabeth May: Madam Chair, this again comes from the advocacy, and evidence of indigenous groups before the committee. It may seem so obvious that we may wonder why the words aren't in there.

This is about the obligation of the agency in the planning phase. The current language doesn't mention the planning phase. The language as it now reads says there is an obligation to consult—not to share information, because I lost that one—with any jurisdiction, etc., that may be affected by the carrying out of the designated project.

The proposal here is to change the wording to "that may be affected by the planning or carrying out of" the affected project. I can't see an objection to including the word "planning".

The Chair: Shall the amendment carry?

Hon. Ed Fast: A recorded vote.

(Amendment negatived: nays 7; yeas 1)

The Chair: On LIB-9, Mr. Fisher.

● (1715)

Mr. Darren Fisher: Madam Chair, the current wording is "site under subsection 15(3), the Agency must, subject to section 17, decide whether an impact assessment of the".

Mr. Aldag's amendment reads:

> That Bill C-69, in Clause 1, be amended by replacing lines 29 and 30 on page 15 with the following:
>
> "site under subsection 15(3), the Agency must decide whether an impact assessment of the"

It's a minor change. It just provides a bit of clarity, and it reflects another motion as well. Mr. Aldag's next motion changes the minister's discretionary power in LIB-12, which provides further clarity on how the minister would exercise the provisions in section 17.

The Chair: I am having some advice here that you might want to look at LIB-12, on page 74 of the package, and you might want to look at LIB-13 and LIB-56 because they are all linked.

Do you want to do all of those, and do that right now?

Mr. Darren Fisher: What are we grouping, Madam Chair?

The Chair: We're looking at LIB-12 on page 74, which is one minister's notice. We're looking at LIB-13, which is on page 79, and LIB-56, which is on page 235, so it's LIB-9, LIB-12, LIB-13, and LIB-56.

Mr. Fast.

Hon. Ed Fast: My question is for our officials.

What's being excised from this particular clause is the reference to the minister's decision under proposed section 17.

Is this amendment actually coming from the officials who have suggested it to the government? Perhaps you could provide us with an explanation of the impact of this amendment. It's somewhat slight, but it is eliminating the "subject to section 17".

What impact will that have?

The Chair: Mr. Parker.

Mr. Brent Parker: I can speak to that.

I'm just going to look at amendment LIB-12 in terms of explaining the difference between that and what's in the act.

Currently under section 17 in the act, there is the ability for the minister to order the agency not to conduct an impact assessment. There are two reasons set out for that. The first reason, in paragraph (a), is that a federal authority advises her that they will not be able to exercise their power. The second reason is that the minister is of the opinion that there are clear unacceptable effects of the project.

The way that I understand the amendment that's being proposed is that, in this case, there would not be the power for the minister to not have the agency proceed with the impact assessment. Rather, the minister would be providing the proponent with a written notice that she's been advised of what the federal authority has indicated, or what her opinion is on the project. There would be a notice that would set out the reasons that the federal authority isn't exercising that power.

The change is that the minister currently, as proposed in the act, could instruct the agency not to conduct an impact assessment; the project would not run through that system. Whereas, in this amendment that power does not exist.

● (1720)

The Chair: All right.

Hon. Ed Fast: That's pretty substantive.

The Chair: Yes.

Shall this package of amendments, LIB-9, LIB-12, LIB-13, and LIB-56 carry?

Mr. Robert Sopuck: A recorded vote.

The Chair: Yes, we can do a recorded vote.

I want to just say for clarification—

Ms. Linda Duncan: I want some more discussion on this first.

The Chair: —that PV-17, on page 65, and PV-22, on page 75, cannot be moved because there will be a line conflict then. If adopted, then NDP-26, which is on page 76, and PV-23, on page 77, will be moot; they'll be replaced.

That's where we are.

You want to have some more discussion, so we'll have a bit more discussion.

Go ahead.

Mr. Mike Bossio: Chair, I thought that you called for the vote.

The Chair: I did, but—

Ms. Linda Duncan: I want to know why we're removing the power of the minister to issue an order.

My second question would be under LIB-13. Who's issuing these tailored guidelines? Nobody is empowered to issue these tailored guidelines. You talk about including tailored guidelines, but nobody has the power to issue these tailored guidelines.

The Chair: Mr. Parker.

Mr. Brent Parker: I can speak to that second part.

That additional text about tailored guidelines refers to the products that would be prescribed in regulation under proposed section 112. Those would be issued then by the agency, as well as the other products that are outlined in addition to the guidelines.

Ms. Linda Duncan: There's a difference between guidelines and regulations. You're saying that you're going to have a regulation that will issue guidelines.

Mr. Brent Parker: The regulation would prescribe the various different products that are laid out there, and it would prescribe the information and studies in that guideline that the proponent has to prepare in order to support the impact assessment process.

Ms. Linda Duncan: This is not clear to me. You're going to issue guidelines by regulation.

Ms. Christine Loth-Bown: The information and time management regulation that we're currently consulting on now—there's a consultation paper out there—would lay out the information that the agency would require of a proponent, as well as the requirements of the agency on what they need to give the proponent, and the time frames in which the process would be managed.

Ms. Linda Duncan: Those are mandatory. They're not guidelines.

Ms. Christine Loth-Bown: The tailored guidelines would replace what is currently known as the EIS, the environmental impact statement.

Ms. Linda Duncan: Either they're regulations or they're guidelines. I don't know what a tailored guideline is. I think it's just really strange drafting.

Ms. Christine Loth-Bown: The regulation would prescribe what would be in the tailored guidelines that would be given to a proponent for them to fill their information requirements to conduct the assessment.

Ms. Linda Duncan: Are you saying you would make the guidelines mandatory?

Ms. Christine Loth-Bown: The guidelines are part of the process, yes. That's what requires the information that the proponent needs to bring forward in the impact assessment process. The guidelines are the culmination of the feedback that we would receive from the public, from indigenous groups, from other jurisdictions, through the early planning process. They're a key product of the early planning process.

The Chair: Thank you very much.

Shall amendments LIB-9, LIB-12, LIB-13, and LIB-56 carry?

Mr. Robert Sopuck: I'd like a recorded vote.

(Amendments agreed to: yeas 5; nays 4 [See *Minutes of Proceedings*])

The Chair: Next up is PV-17.1

● (1725)

Mr. Darren Fisher: Isn't it PV-17? Is that still accurate?

The Chair: PV-17 is dealt with under this one, so it's PV-17.1.

Ms. Elizabeth May: I'm sorry, Madam Chair. I'm confused as to what happened to PV-17.

The Chair: As I mentioned before, if it's adopted, you have a line conflict, and therefore you couldn't do it anymore.

Ms. Elizabeth May: Okay, but PV-17.1 is fine.

The Chair: Yes, PV-17.1 is fine.

Ms. Linda Duncan: You also mentioned LIB-13. Does that mean LIB-13 is also adopted?

The Chair: Yes, LIB-12, LIB-13, LIB-56 are all adopted, and I said if they're adopted PV-17 and PV-22 cannot be moved because there will be a line conflict, and NDP-26 and PV-23 can't be moved because then they're moot.

Let's move on to PV-17.1.

Ms. Elizabeth May: Okay. I think that members of the committee will recognize the concepts and the language here because they come right out of the expert report on the environmental assessment commission by the government, and its guidance in the agency's decision to incorporate what the expert panel described as minimum factors. I'm inserting, at page 15, line 32 around this. How it reads now is:

> (2) In making its decision, the Agency must take into account

My amendment reads:

> (2) In making its decision, the Agency must determine whether the designated project is clearly linked to matters of federal interest by considering if it takes place on federal lands or uses federal funding and if the federal government is a proponent of the designated project, as well as the extent to which the project would affect any of the following:
>
> (a) Indigenous peoples and lands;
>
> (b) species at risk;
>
> (c) fish;
>
> (d) marine plants;
>
> (e) migratory birds;
>
> (f) greenhouse gas emissions of national significance;
>
> (g) watershed or airshed effects crossing provincial or national boundaries;
>
> (h) navigation and shipping;
>
> (i) aeronautics;
>
> (j) activities crossing provincial or national boundaries and works related to those activities; or
>
> (k) activities related to nuclear energy.

Then it continues with proposed subsection (2.1):

> (2.1) If the Agency determines that the designated project is clearly linked to matters of federal interest, it must take into ac-

That way the rest of what currently is under "Factors" in proposed paragraphs 16(2)(a) through (g) apply without needing any alteration. It fits in neatly there without any requirements to bump or renumber what you find on page 16 in proposed paragraphs 16(2)(a) through (g).

Not to put too fine a point on it, this is critical for this legislation to rebuild trust. This is the section that undoes what happened in Bill C-38 when Stephen Harper repealed the Environmental Assessment Act and removed the full scope of federal jurisdiction and triggers from the way in which the federal government must do impact assessments, as they're now known, in areas of federal jurisdiction. This essentially is what the federal government did between 1976 and 2012, a period of time in which projects were completed: 99.9% of the ones that went through environmental assessment were approved, but they were approved through the process of environmental assessment federally by the consideration of all projects, whether they were federal money, federal lands, the federal government as a proponent, and touching in these areas.

Again, this was described in the expert panel report. The experts were hand-chosen by cabinet ministers. They went across the country. This is the advice, word for word, from the expert panel. It fits so neatly into this section. I hope you'll consider accepting this, to save this bill and make it rebuild trust.

The Chair: We'll go to Ed first.

Hon. Ed Fast: Madam Chair, this will do nothing to restore trust that projects of national interest will actually get built in an environmentally sustainable way.

What you see here is on top of all the new criteria that have been imposed within the legislation, the upstream and downstream impacts. Now you're adding another 11 criteria that proponents are going to have to address and overcome. You're adding obstacle after obstacle in the way of getting projects properly reviewed and approved when they are in the national interest and when these projects can be built in a sustainable way.

This takes it far beyond what we already have in this bill. Even as it is, this bill is a step backward. It's going to undermine investment in Canada. This proposal is the death knell of development in Canada.

● (1730)

The Chair: Linda.

Ms. Linda Duncan: I have completely opposite issues.

I'm concerned, Ms. May, that you are watering down those obligations. Right now it says, "must take into account", and all of our witnesses were saying please replace "by considering" with "take into account". I'm puzzled why you'd take that out.

Also, it already references matters within federal jurisdiction. You have listed some of those, but there may well be matters under federal jurisdiction that are not included in that list, and so it may be less of a responsibility than as it stands now.

Ms. Elizabeth May: May I respond to Linda?

The Chair: Be very quick, because I'm running well past the time.

Ms. Elizabeth May: I do not take out any of the language that's there now. It still says that it must take into account and lists those subtopics (a) through (g). The language still concludes that it must take these into account. This isn't adding anything new. This is a question of scoping the project. When is a federal trigger tripped?

The current approach of the bill is to assess very few projects, and only if they're major. We know that environmental impacts from federal projects can occur even if the project is not major, even if the project is relatively small but happens to occur in a place with a highly vulnerable ecosystem, and it will completely escape the notice of people if we're working solely from a project list.

This is to restore what we had since 1976, during a time in which we had Progressive Conservative federal governments, in which we had, for a while, Conservative governments where 99.9% of the projects proceeded. It did not ever obstruct development. What it did was ensure that development within federal jurisdiction went through an environmental screen. It's pretty essential.

The Chair: I'm not sure it got drafted right then, because I'm of Linda Duncan's position.

You have replaced subsection (2) with all of these, and then you have subsection (2.1). It's not clear what you're trying to do here, the way it's drafted.

Ms. Elizabeth May: I don't understand your concern, Madam Chair.

The way it's drafted is to say that the agency must determine whether the project is triggered and linked to federal jurisdiction. That is subsection (2). Subsection (2.1) is all the language that's currently in the bill, just to say if it's a matter of federal interest, then we go to (2.1), which says it must take into account the following factors, and then those are (a) the description, (b) the possibility of carrying it out, and so on. Paragraphs (a) through (g) remain in place with the same header, "must take into account".

The Chair: I've got it now.

I'm sorry, I was turning the page too early.

Ms. Elizabeth May: It's all right.

The Chair: It was that one line.

Ms. Elizabeth May: Okay.

The Chair: Got it.

Ms. Linda Duncan: So, you're making what is currently subsection (2) into subsection (2.1)?

Ms. Elizabeth May: No, I'm making—

The Chair: No.

Line 32 ends up, "In making its decision, the Agency must take into ac-", and then she adds in "must determine" and she puts all these things in. Then, it carries on and says, "If the Agency determines that the designated project is clearly linked to matters of federal interest, it must take into ac-" and then it picks up, "-count the following factors:" and goes on.

Ms. Elizabeth May: Yes.

Ms. Linda Duncan: I would like an interpretation by our officials.

The Chair: No, it doesn't need an interpretation.

Ms. Linda Duncan: No, I need an interpretation, because the rules of interpretation are that if you start specifying, then it excludes the others. The way it's drafted is a little odd. I just want to have certainty in the way it's drafted, because it starts out by saying—

The Chair: No, I understand your concern.

Ms. Linda Duncan: —"matters of federal interest", and then it starts listing specifics. I would like to know, in the rules of interpretation, by giving those specifics, if it takes away anything that might not be listed. That's my concern.

The Chair: Who would like to answer that one?

Ms. Christine Loth-Bown: I'll turn to Justice to answer that.

Ms. Linda Duncan: Those are legislative interpretation rules. I just need to be clear.

Mr. Jean-Sébastien Rochon: I'm sorry, Madam Chair, I'm trying to catch up with the—

The Chair: We're on page 15, at the bottom.

Ms. Linda Duncan: It's a rule of interpretation.

Mr. Jean-Sébastien Rochon: I understand where we are. I'm just looking at subsection (2.1) and trying to figure out how this is going to work with proposed subsection (2).

In a sense you'd have to reconcile what is apparently a closed listing—

● (1735)

Ms. Linda Duncan: I'm not sure you're adding in the list. It's all under paragraph 16(2)(b) anyway.

Mr. Jean-Sébastien Rochon: —at (2), and then under (2.1) we'd have something that's more open. I'm going to have to think about this a bit, Madam Chair, unfortunately.

The Chair: We'll suspend for a short time to give you a chance to think about it, and then we'll come back.

● (1735)

(Pause)

● (1740)

The Chair: We're going to resume.

We're on PV-17.1.

Mr. Rochon.

Mr. Jean-Sébastien Rochon: Madam Chair, we considered the interplay between the proposed subsection (2), and what would now be (2.1). Proposed subsection (2) would be a closed list, an exhaustive list of topics to consider.

The Chair: So, is (2.1) an exhaustive list?

Mr. Jean-Sébastien Rochon: Proposed subsection (2) is an exhaustive list.

The Chair: The question was whether it minimizes what you already have in proposed subsection (2), which is what we have in the bill. Does it reduce what's in the bill? No, because it has proposed subsection (2.1), which is listing everything that's in the bill.

Mr. Jean-Sébastien Rochon: That's correct, although you would need to go through proposed subsection (2) before you get to proposed subsection (2.1).

The Chair: Right.

Mr. Brent Parker: If I understand the amendment, it notes federal jurisdiction, and that's where the panel came from, and the bill actually in the definitions has "effects within federal jurisdiction" listed out.

In addition, it also has a definition for "direct or incidental effects", and that definition essentially means that if there is a federal decision, any direct or incidental effects associated with that decision would be taken into account. It lists out the types of federal decisions that could be associated with the projects. That aspect is captured in the bill through the definitions.

● (1745)

Ms. Elizabeth May: If I may, "effects within federal jurisdiction" is narrower than a definition of federal jurisdiction.

Ms. Linda Duncan: Absolutely.

Ms. Elizabeth May: I agree with Linda. The language "effects within federal jurisdiction" is boilerplate Harper language that's gone in unchanged. I'm sorry for being political with our civil servants, but I do submit my amendment in hopes that it will broaden the mind to look at federal jurisdiction, and then you can look at the effects within federal jurisdiction as you scope out the projects.

The Chair: I understand, Linda, you have an amendment you want to make.

Ms. Linda Duncan: The amendment that I'm putting forward to Ms. May is, instead of saying "by considering", to say "taking into account".

Ms. Elizabeth May: I have no role at this point, because my amendments are deemed submitted by the committee process, so if the committee likes this amendment...I like it just fine.

Ms. Linda Duncan: It doesn't have to be friendly—

Ms. Elizabeth May: It doesn't have to be anything to me.

The Chair: Linda, you're making an amendment to the amendment.

Ms. Linda Duncan: It would say instead, in subsection (2), "In making its decision, the agency must determine whether the designated project is clearly linked to matters of federal interest".

Mr. Darren Fisher: It says it must.

Ms. Linda Duncan: Yes, it would say, "The agency must take into account whether the designated project is clearly linked to matters of federal interest".

The Chair: I'm still not clear exactly what the change is: "In making its decision, the agency must take into account". Are you dropping "determine whether the designated project is clearly linked"?

Ms. Linda Duncan: It's quite a change from the way it's drafted right now. I'm trying to make sense of that.

It should say, "In making its decision, the agency must take into account whether the designated project is clearly linked to matters of federal interest", rather than "determine".

The Chair: You're making a subamendment that makes that change, and I guess we vote on the subamendment first.

An hon. member: A recorded vote.

(Subamendment negatived [See *Minutes of Proceedings*])

The Chair: The amendment stands, unamended

Shall the amendment carry?

Hon. Ed Fast: A recorded vote.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We're on to PV-18.

Ms. Elizabeth May: We're in the same subsection, so keep your minds on what we just looked at, that is, paragraphs (d), (a) through (g), and paragraph (c) is the one that deals with the agency's taking into account any impacts the project might have on the rights of indigenous peoples.

My amendment is to change "any adverse impact that a designated project may have" to "any direct, indirect, or cumulative impact" that the designated project may have on the rights of indigenous peoples of Canada.

Again, the language that you see there, on page 16, paragraph (c), "any adverse impact" would be changed to "any direct, indirect, or cumulative impact that the designated project", and then the rest of the sentence continues in relation to the rights of indigenous peoples.

● (1750)

The Chair: Okay.

Hon. Ed Fast: I'd like a recorded vote.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 7; yeas 1)

The Chair: Next is NDP-25.

Linda.

Ms. Linda Duncan: Guess where we are again.

This is line 9 on page 16. That is the provision where we're talking about the factors that the agency must take into account. Paragraph (c) talks about adverse impacts on the rights of indigenous peoples under section 35 of the Constitution, and I am adding in the United Nations Declaration on the Rights of Indigenous Peoples, which seems logical.

The Chair: Shall the amendment carry?

Hon. Ed Fast: I'd like a recorded vote.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 7; yeas 1)

The Chair: We're moving to LIB-11.

Ms. Elizabeth May: Madam Chair, if I may, I had submitted an amendment just after the deadline and I hoped it would be considered. It would occur at line 18 on page 16.

Oh, wait, you're still at line 10.

The Chair: Yes, we're not there yet.

You don't want to reveal that.

Okay, we're on LIB-11.

Hang on a minute, I have PV-19.

Ms. Elizabeth May: That was defeated already in the cluster.

The Chair: Yes.

Okay, next up is LIB-11.

Mr. Rogers.

Mr. Churence Rogers (Bonavista—Burin—Trinity, Lib.): Madam Chair, this particular amendment is in regard to the concerns expressed about the timelines and challenges that some of the stakeholders identified as to delays and so on. This amendment is being submitted in response to that, to try to deal with areas where timelines were uncertain.

I'm proposing this amendment to address these concerns.

The Chair: Shall the amendment carry?

Hon. Ed Fast: A recorded vote.

Ms. Linda Duncan: I have a question.

The Chair: You always do that after I've called the vote.

Ms. Linda Duncan: Well, before you call the vote—

Mr. Mike Bossio: Chair, the vote's been called. Please.

The Chair: Okay, I'm trying to be generous but can we—

Hon. Ed Fast: The votes are being called too quickly to provide an opportunity....

The Chair: Okay.

Hon. Ed Fast: We have to deliberate.

Ms. Linda Duncan: We don't need the answer now—

Mr. Mike Bossio: Chair, the vote has been called.

Ms. Linda Duncan: —but I have a question that the legal people might want to take away for furthering the bill.

The Chair: I'm trying to keep the harmony with everybody.

Mr. Mike Bossio: Even so, we cannot continue to do this every time the vote is called.

The Chair: I hear you, and I will be stricter as we move forward.

Go ahead, Linda. What's the issue?

Ms. Linda Duncan: If you call for comments first, that would be helpful, instead of calling the vote.

I want to thank you, Churence, for this amendment because it raises this issue.

My concern is that the bill as written simply says "comments received from the public". This is a question that has arisen to me in this bill. Who is the public? There are a lot of places in this bill where we talk about the public, but we're assuming that it includes indigenous people.

If you specify this here, I'd just like to give a red flag that we need to be careful throughout the bill where we need to specify indigenous people. Are they public?

You, obviously, had picked up on this.

Mr. Churence Rogers: We're talking about presenters—

Ms. Linda Duncan: I'm agreeing with you. I'm not disagreeing, but you are qualifying, okay? You're saying that it's more than public, so.... I think it's something that we need to be careful with throughout the bill.

The Chair: Okay? Let's get back to it.

Shall the amendment carry?

Mr. Mike Bossio: Yes.

Hon. Ed Fast: A recorded vote.

(Amendment agreed to: yeas 8; nays 0 [See *Minutes of Proceedings*])

The Chair: Okay. Where's PV-19.1? I don't have it. I'm missing it. Does anybody have a spare PV-19.1?

Go ahead, Ms. May.

● (1755)

Ms. Elizabeth May: Madam Chair, for the short-form understanding of everyone in the room, this amendment of mine attempts to insert:

> (2.1) For the purposes of subsection (1), a project involving any of the following decisions requires an assessment:
>
> (a) a decision of the Minister of Fisheries under the Fisheries Act to permit any temporary or permanent alteration to, or destruction of, fish habitat;
>
> (b) a decision of the Minister of Transport under the Canadian Navigable Waters Act to issue a permit pertaining to navigable waters whether or not these are listed in the schedule; and

I want to flag this one for you, because this will save a lot of trouble in understanding the Navigable Waters Act later. We may not have time to amend the Navigable Waters Act later or pay attention to it, given the time constraints the committee is under, but this will deal with the issue of "on or off" the schedule and the impact of that for environmental assessment. This is a very helpful amendment.

Then it continues:

> (c) a decision of the Minister of Environment under the Species at Risk Act to permit activities that pose a threat to a listed species.

Those three—

An hon. member: Slow down.

The Chair: I'm noticing that a lot of people are confused. They don't seem to have PV-19.1 in their book.

An hon. member: It's not in our package.

Hon. Ed Fast: Where is it?

The Chair: That's a good question. I don't know where it is.

We're going to make copies of that, because everybody's going to need it.

Ms. Elizabeth May: I apologize. I thought it had been distributed. I'm sorry.

The Chair: All right. Can we move on?

Mr. Olivier Champagne (Legislative Clerk, House of Commons): It's okay if she just explains it, but we can make copies.

The Chair: I'm just not sure that people are comfortable with it until they actually see it.

Mr. Olivier Champagne: We can ask the committee.

The Chair: Can she just read it or do you need to have it in front of you?

Mr. Darren Fisher: Is it possible to read the corresponding lines?

An hon. member: How long is it?

Ms. Elizabeth May: I will. I'll absolutely read it slowly.

We go to line 18 on page 16, so we're still in that area. Having failed at my last (2.1), this is a new (2.1). After "two factors" would be inserted the following:

> (2.1) For the purposes of subsection (1),

—which of course deals with the agency deciding if the impact assessment of the project is required—

> a project involving any of the following decisions requires an assessment:

Then there are three paragraphs. Again, these will be the decisions that require an assessment:

> (a) a decision of the Minister of Fisheries, under the Fisheries Act, to permit any temporary or permanent alteration to or destruction of fish habitat;
>
> (b) a decision of the Minister of Transport under the Canadian Navigable Waters Act to issue a permit pertaining to navigable waters, whether or not these are listed in the schedule; and

This means those that would be based on navigable waters as found in the definition, as well as those on the schedule, and then there is the last subclause:

> (c) a decision of the Minister of Environment under the Species at Risk Act to permit—

The Chair: Hold on. I'm going to stop you, just so we don't spend time.... People are not able to follow without it in front of them, so we're going to get copies made—

Ms. Elizabeth May: Okay.

The Chair: —and then we're going to move on, because we're into other lines, and we're going to go back to that one.

Ms. Elizabeth May: That's fine with me, Madam Chair. I apologize that it wasn't in your package.

An hon. member: Will we suspend?

The Chair: No, I'm not going to suspend. We're going to move on, okay?

Hon. Ed Fast: I would like to move [*Inaudible—Editor*]

The Chair: No, no, not yet.

We're now on PV-20. I think everybody has PV-20 in front of them.

Ms. Elizabeth May: This goes to an amendment to lines 19 and 20 on page 16, which now say:

> The Agency must post a notice of its decision and the reasons for it on the Internet site.

This amendment would say:

> (3) If the Agency decides that an impact assessment of the designated project is required, it must set the date by which that impact assessment is to be finalized.
>
> (4) The Agency must post a notice of its decision under subsection (1) and the accompanying reasons, as well as the date set under subsection (3), on the Internet site.

It's more information. I think that's the kind of thing that some committee members have liked in the past. It would provide the public more information, setting out reasons and providing a date.

The Chair: Okay, you're expanding the posting notice on the Internet site.

Shall the amendment carry?

Hon. Ed Fast: I would like a recorded vote.

(Amendment negatived: nays 6; yeas 2 [See *Minutes of Proceedings*])

The Chair: That did not carry.

● (1800)

Hon. Ed Fast: It was so close.

The Chair: We're on amendment PV-21.

Ms. Elizabeth May: On amendment PV-21, we're still in the same area but we're now just one line below:

> (4) This section does not apply in respect of an impact assessment that is referred to a review panel in accordance with section 43.

Amendment PV-21 is related to UNDRIP, and I just realized that it's already been defeated, so, Madam Chair, I think I started defending amendment PV-21 without remembering that it is already defeated.

The Chair: I don't think so.

An hon. member: No.

Ms. Elizabeth May: Good, okay. All right.

This section deals with the designated project findings of a review panel and the automatic referral for designated NGO projects regulated under the Nuclear Safety and Control Act or the Canadian Energy Regulator Act, and that would deal with matters that would exclude that section, which I tried to remove, of exemptions under those two acts.

(Amendment negatived: nays 7; yeas 1 [See *Minutes of Proceedings*])

The Chair: Next up, we know that amendments LIB-12, PV-22, NDP-26, and PV-23 were dealt with under amendment LIB-9, so now we are at amendment PV-24.

Ms. Elizabeth May: On amendment PV-24, we're now on page 17 dealing with timeline issues. This would change proposed subsection 18(1), which currently says:

> If the Agency decides that an impact assessment of a designated project is required—and the Minister does not make an order under section 17

—and so on. I would replace that with:

> 18(1) If an impact assessment of a designated project is required

—and then replace the other lines with:

> the designated project—the Agency must, within the timeline agreed between the Agency and the proponent

—which replaces the lines that deal with 180 days after the day on which it posts a description. It allows a timeline to be negotiated as opposed to being imposed. In other words, it removes 180 days and replaces it with the specifics of what this particular project requires.

Is everybody with me on that? It takes away a set timeline of 180 days and replaces it with "within the timeline agreed between the Agency and the proponent".

The Chair: Is amendment PV-24 clear?

Shall the amendment carry?

It's a recorded vote?

(Amendment negatived: nays 7; yeas 1)

The Chair: Amendment LIB-13 was dealt with under amendment LIB-9, so that one is not happening and we will go to amendment LIB-14.

No, sorry, I'm going to go back to the one we just got, which is amendment PV-19.1.

Ms. May.

Ms. Elizabeth May: We're going back to page 16. We're back into that section we spent a lot of time on, entitled "Decisions regarding impact assessments". These are the sections that guide the agency's decisions. As far as I recall, we haven't accepted any amendments to this process, although we've had a number of amendments go around it. I would be adding a new proposed subsection 16(2.1), so after the factors that the agency must take into account, there would be a new mandatory establishment that there would be an assessment, either very preliminary—the agency could decide what kind of assessment, obviously....

To make it really clear, this is re-establishing the law list that was repealed in the omnibus budget bill, Bill C-38, in the spring of 2012. We have had federal laws triggering environmental assessments from 1976 until 2012. There are only three federal statutes, only three kinds of decisions by three different ministers, that would trigger an environmental assessment or an impact assessment.

The first would be a decision by the Minister of Fisheries under the Fisheries Act to permit any temporary or permanent alteration to or destruction of fish habitat. We had this before, for decades. It was killed by the previous government. It was a very good protection for fish habitat and for review of projects.

Then (b) would be a decision of the Minister of Transport, under what's now renamed the Canadian navigable waters act, to issue a permit pertaining to navigable waters, whether or not these are listed in the schedule. This is basically the form of what we had before 2012, acknowledging that we now have a schedule. Under the new version of the navigable waters act within Bill C-69 we have two kinds of navigable waters: those that are covered by the definition and those that are in the schedule. This would require that any decision by the Minister of Transport related to a permit pertaining to navigable waters, whether in the schedule or not, would trigger an EA.

Last would be a decision by the Minister of Environment under the Species at Risk Act to permit activities that pose a threat to a listed species.

The granting of those specific three kinds of permits only under those specific sections of those stated laws would trigger an impact assessment, if you accept my amendment, which is, as you can see, a very critical rebuilding of trust in the impact assessment process.

● (1805)

The Chair: Mr. Sopuck and then Linda.

Mr. Robert Sopuck: I've never heard so much nonsense in my life. When one looks at the navigable waters act, for example, the issue with it is the definition of what a "navigable water" is. The courts decided, before the changes in 2012, that a water body that could float a canoe for three days was a navigable water. That was why the act was changed, because it got ridiculous in terms of court actions against proponents for small water bodies that were really, clearly, not used for navigation purposes. This particular amendment needs to be defeated.

The Chair: Linda.

Ms. Linda Duncan: I think it's a good amendment but it needs something added.

To make it consistent with the rewriting of that provision by the Liberals, it should read, under proposed subsection 16(2.1), "For the purposes of subsection (1), a project involving any of the following decisions requires an assessment prior to" . Under the existing act, if any of those authorities have already made the decision, it precludes an assessment. The important thing in here is to say, in these circumstances, before they make these decisions, there must be an assessment.

The Chair: Just let me make sure, what are you inserting with your subamendment?

Ms. Linda Duncan: I'm adding the words "prior to" after the words "an assessment".

The Chair: Where?

Ms. Linda Duncan: I just read it, "For the purposes of subsection (1), a project involving any of the following decisions requires an assessment prior to".

Ms. Elizabeth May: Yes. That's it.

The Chair: All right.

Ms. Elizabeth May: Madam Chair, may I respond to Bob's concern?

The Chair: I don't want debate. We don't need debate. I want clarity.

Is there some clarity here?

Ms. Elizabeth May: Yes. I think that if Bob looks at the definition of "navigable water" in the new act, it precludes the scenario he described. It refers to a navigable body of water that is used or where there is a reasonable likelihood it will be used by vessels as a means of transport or travel. It precludes the concern that was raised before 2012. It's a very defined navigable water—

The Chair: Okay, we're going to start a whole discussion going back and forth, and that's not really—

An hon. member: [*Inaudible—Editor*]

The Chair: Let's stop, please.

I'm getting some advice here that the amendment to the amendment isn't actually working, because it's a list. It's an assessment and then there's a list, a decision of the Minister of Transport.

● (1810)

Mr. Olivier Champagne: If you read the sentence, it doesn't make sense.

The Chair: It doesn't work.

Hon. Ed Fast: You can read it two ways. That's the problem.

The Chair: All right, I understand what you're trying to do.

Ms. Linda Duncan: I don't see any problem with it. Proposed subsection 16(1) says:

> After posting a copy of the notice on the Internet site under subsection15(3), the Agency must, subject to section 17, decide whether an impact assessment of the designated project is required.

This part says that your decision will be thus and so. It limits the exercise of that discretion.

The Chair: No, it doesn't....

Go ahead.

Mr. Olivier Champagne: The proposed amendment to new subsection 16(2.1) says that these are the situations where an assessment is required—(a), (b), and (c), are the situations where an assessment is required.

Hon. Ed Fast: Put the colon after "decisions".

Mr. Olivier Champagne: You cannot add "prior to", because—

The Chair: Okay, from what I can see, it doesn't work, so we're not going to not accept that subamendment.

Ms. Linda Duncan: By their amendment, it is already excluded, because the law already says that if they've made those decisions, the minister cannot order an assessment, and neither can the agency.

The Chair: I think we understand what the challenge is here. I'm not accepting the inadmissible amendment to the amendment.

Let's vote. Shall amendment PV-19.1 carry?

Hon. Ed Fast: A recorded vote.

(Amendment negatived: nays 7; yeas 1) [See *Minutes of Proceedings*])

Ms. Linda Duncan: It's pretty obvious that it should be in there.

The Chair: The amendment is not carried.

I know what you're trying to do there, but it maybe wasn't the right place.

We are now at LIB-14.

Go ahead, Mr. Fisher.

Mr. Darren Fisher: I will try. I just found out a few minutes ago that I will be moving LIB-14 on behalf of Mr. Amos.

On page 17, at line 14, it refers to posting a copy of the notice on the Internet site. The amendment is that Bill C-69, in clause 1, be amended by adding after line 14 on page 17 the following:

> (1.1) The Agency must take into account the factors set out in subsection 22(1) in determining what information or which studies it considers necessary for it to conduct the impact assessment.

Ms. Linda Duncan: Which one are you reading?

Mr. Darren Fisher: It's page 17 in the bill, starting at line 14.

We did hear that the bill needs to provide a bit more clarity—much like John Aldag's amendment that we moved earlier—on what factors will be considered in assessments and in decision-making. This one clarifies which factors will be considered in the early planning phase, and it will help with consistency across the different stages of the assessment process.

The Chair: It's LIB-14.

Are you with us Linda?

Ms. Linda Duncan: This is where the agency has already decided that there will be an impact assessment, and then this is deciding what will be in the terms of reference.

Mr. Darren Fisher: It is which factors would be considered in the early planning.

Ms. Linda Duncan: In the actual assessment. Okay.

The Chair: Okay?

Hon. Ed Fast: Chair, this was [*Inaudible—Editor*]

Ms. Linda Duncan: Thank God. The bill wasn't obvious there.

The Chair: Shall the amendment carry?

We'll have a recorded vote.

(Amendment agreed to: yeas 7; nays 0)

● (1815)

The Chair: Now we're at CPC-1.1.

Go ahead, Mr. Sopuck.

Mr. Robert Sopuck: We're recommending that lines 15 to 27 on page 18 be deleted, and I'll explain why.

The extension of the time limit in subsection 19(2), at "the proponent's request, the Agency may extend the time limit", is very reasonable from the standpoint that many impact assessments require field work. It's not all just done on the computer. There may be an ungulate survey required and the snow conditions aren't right for the aerial counts, so the proponent simply cannot meet the time limit due to weather or other limitations.

The agency can extend the time limit to gather the necessary information. However, in subsection 19(3), if the agency extends the time limit, all of a sudden the proponent may be required to provide additional information. It seems to me that the agency should be competent enough to scope out the project at the very beginning in terms of what information the proponent would be required to provide. But, again, as I pointed out, many of these studies are field studies and there are weather limitations and other limitations that can preclude reaching a time limit.

In subsection 19(4), if the agency is satisfied, it must post a notice. But, again, in subsection 20(1), it says, "If the proponent does not provide the Agency with the information or studies within the time limit...or within any extension of that time limit, the impact assessment is terminated." It just stops. I think this is quite unfair for the proponent. Subsection 19(2) is quite good, given how difficult it is to collect information from time to time. Perhaps the community consultation has gone on longer than the original time limit that was specified.

Again, for all those reasons, I think our amendment deleting lines 15 to 27 is reasonable, because it doesn't preclude the provision of information, but it makes sure it's fair to the proponent.

The Chair: Thank you.

I have some determinants here. If we adopt this amendment, then amendments LIB-27, LIB-28, LIB-32, and LIB-75 cannot be moved because this will be gone, so they will be moot. That's also true for CPC-8.1, which refers to this, so it's not valid if this is adopted.

Ms. Linda Duncan: Sorry about this. I'm trying to remember if at all in this bill the agency is actually authorized to request additional information, because these provisions simply talked about extending time, but they don't deal with the power of the agency to actually require additional information.

The Chair: Am I reading this wrong? Doesn't 19(3) do that? It refers to "additional information or studies". He's deleting it, but it's there right now.

Ms. Linda Duncan: Can they only ask for additional studies if they extend the time limit? Surely, that's not what—

● (1820)

The Chair: No. Listen, we're dealing with this amendment. This amendment says to delete all of that. I'm not debating what's in it. I'm just saying, he's removing lines 15 to 27. He's taking out "Additional Information or studies", "Notice posted on Internet site", "Termination of impact assessment", and "Notice posted on Internet site".

I'm not debating what's in this.

Ms. Linda Duncan: It might limit the power elsewhere in the bill. That's why I'm asking.

The Chair: Understood.

Ms. Linda Duncan: I think the bill gives the agency and the minister the power to ask for more information. I'm curious about where that is, because this may limit that power. It would be conditional only if the agency extends the time limit.

The Chair: All right. Let's just ask the experts to clarify that.

If this were to be removed, is there an opportunity elsewhere to request that additional information?

Ms. Christine Loth-Bown: This is the place where you can request additional information in the information gathering place. This is at the notice of commencement and the information gathering section.

We are also currently out on a consultation paper right now to talk about what would be the limits or why you might go and request additional information, and to provide the parameters for which that information can be requested, and that would be in the information and time management regulation.

Ms. Linda Duncan: That doesn't answer my question.

Where in this bill is the agency empowered generally to ask for additional information at any point in the review?

Ms. Christine Loth-Bown: Under "General Rules", on page 21 of the bill, there are general rules on impact assessments conducted by the agency, starting in section 24—

Ms. Linda Duncan: Okay, but subsection 26(2)....

Ms. Christine Loth-Bown: —and going to subsection 26(2)

Ms. Linda Duncan: There's my question. If we don't remove subsection 26(2), does that limit it and say that they can't ask for additional information unless they've extended the time period for the review?

Mr. Brent Parker: There are two separate provisions there. There's the one that Christine noted, that there's the ability to request additional information. The nature of the section that we're talking about, where we can extend the timeline in subsection 19(2), just provides the agency with the power to extend the timeline, but subsection 19(3) empowers the agency to require information of the proponent as well. Without that provision, we would be able to extend the timeline, but not actually have the power to require the information.

Ms. Christine Loth-Bown: Subsection 19(1) lays out the timeline for completing the information required for an impact assessment, which is three years, and if a proponent feels they need more than three years to provide that information, then we can extend the timeline.

Ms. Linda Duncan: I don't disagree with that. I just think it limits. So, if you want to stand by, it....

The Chair: Okay.

Ms. Linda Duncan: But you could object and say that you can only do this if the timeline is extended.

The Chair: Mr. Fast wants to chime in.

Hon. Ed Fast: I do want to chime in.

Really, the reason we are looking to get rid of those additional provisions in subsections 19(3) and 19(4) is that the proponent, at the commencement of the process, is required to provide certain information and study.

It may be that those studies and that information will take some additional time. There's a huge risk for the proponent triggering the extension for the time limit, because once that's triggered, the agency has the right to request a raft of new information, so why would a proponent take that risk? That's what happens here.

The Chair: But it says, "On the proponent's request".

Hon. Ed Fast: Yes, on the proponent's request for an extension. That's all the proponent wants. The proponent isn't offering additional information and isn't proposing to open Pandora's box again, but simply saying, "You've asked for these studies and information. The time limit that you've provided me with by legislation is not quite enough. I need an extension".

The agency says, "Sure, we'll give you an extension. However, you know that Pandora's box? It's now open, and we need additional information and studies."

We're simply eliminating that potential penalty for asking for an extension.

The Chair: Fair enough. I think you've made your point.

Mr. Sopuck.

Mr. Robert Sopuck: I just want to re-emphasize the point as someone who's done fieldwork.

Often proponents are up against weather and other extenuating circumstances that preclude them from providing the information on time. I don't think there's a project proponent anywhere in the country who wants to game the system and not provide the information, but some things are just beyond a proponent's control.

I think this is a very fair request to provide the proponent with certainty and also the flexibility to get more time to gather the information that is required. Again, we should trust the agency at the very outset to scope the project accordingly so there's no need to ask for the agency to ask for more information.

Thank you.

● (1825)

The Chair: We'll see how the committee votes.

Shall the amendment carry?

Hon. Ed Fast: I'd like a recorded vote.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays, 6; yeas, 2 [See *Minutes of Proceedings*])

The Chair: We will move on to LIB-15.

Mr. Fisher.

Mr. Darren Fisher: Madam Chair, we are moving now to page 19, line 17, and I am happy to move this amendment by Mr. Amos. It amends clause 1 by:

(a) replacing line 17 on page 19 with the following:

Madam Chair, should I read all of this, all the way to the bottom, into the record?

The Chair: It's not necessary. I think everybody's has it in front of them. They got the package last Friday.

Mr. Darren Fisher: If you look at where "Factors – impact assessment" is, that's where we start, and we're replacing line 17 on page 19 with:

> 22 (1) The impact assessment of a designated project, whether it is conducted by the Agency or a review panel,

Part (b) of the amendment is a new paragraph 22(1)(a), and part (c) is a new paragraph 22(1)(f). If you want me to read those into the record, I can.

The Chair: No, you don't need to read it into the record.

Mr. Darren Fisher: Again, this provides more clarity on what factors are going to be considered in assessments and in the decision-making. Will has other amendments coming forward, but this one would complement a proposed change to the definition section, again further clarifying that a project's effects include both its "positive and its negative consequences".

The Chair: Thank you for that.

If we adopt this amendment, NDP-27 and CPC-1.3 cannot be moved because there will be a line conflict. NDP-27 will be dealt with because it will fall under this. It's the same issue. If it's adopted, CPC-1.3 and PV-17 cannot be moved because, again, we'll have a line conflict.

Mr. Darren Fisher: I'm willing to live with that if you are.

The Chair: Let's just see how the vote goes.

Ms. Linda Duncan: I have an amendment to make now.

The Chair: Do you have an amendment to the amendment?

Ms. Linda Duncan: It is to amend Mr. Fisher's amendment.

The Chair: Let's hear your amendment to the amendment.

Ms. Linda Duncan: I like what you're saying, "Agency or a review panel". I'm also proposing that. That's good, but can you please add to line 19 on page 19, in (a), "the direct or incidental changes to the environment"?

Mr. Darren Fisher: "Or" or "and"?

Ms. Linda Duncan: It could be "direct and incidental" or "direct or incidental", but "direct or" probably.

The Chair: Are you on part (f) "any alternatives to the designated project that are technically and economically feasible and are"?

Where are you?

Ms. Linda Duncan: I'm in (b), line 19, page 19, under (a). The amendment says, "changes to the environment", and I am requesting that you add at the front end of that, "the direct or incidental changes to the environment".

Mr. Darren Fisher: Would it be, "The direct or incidental changes to the environment or to health, social or economic conditions"?

Ms. Linda Duncan: Yes.

Mr. Darren Fisher: Can we have a minute, Madam Chair?

The Chair: Yes, I'll give you a chance to have a discussion.

The Chair: That didn't take long.

Let's vote on the amendment to the amendment, which is adding the words, "direct or incidental", to22(1)(a).

Shall the amendment to the amendment carry?

An hon. member: I'd like a recorded vote.

The Chair: We'll have a recorded vote.

(Subamendment negatived: nays, 7; yeas, 1)

Ms. Linda Duncan: I have a question on your last one, where you add (f), or where you're saying "any alternatives to the designated project", etc. My concern is the issue that I raised before. You are then excluding alternatives that could deliver the need but not necessarily related to the proposal. Let's say somebody proposes a dam to provide so many megawatts or gigawatts of power. When you say, "are directly related to the designated project", I'm not sure if that's preventing that. I'm not sure that you need those words. I think you are going to really limit any consideration of alternatives.

● (1830)

Mr. Darren Fisher: I don't see any words that shouldn't be here.

Ms. Linda Duncan: What do you mean by the words "directly related to the designated project"?

Mr. Darren Fisher: Again, this is Mr. Amos's amendment and he is not here to speak to it, but he wants to add clarity to the requirement to consider alternatives.

Ms. Linda Duncan: I don't oppose that. It's the last line, "directly related to the designated project", that limits the consideration of alternatives. Is that what he wants to do?

Mr. Darren Fisher: It's right here. It's in (f), right?

Ms. Linda Duncan: Yes, the last line, "and are directly related to the designated project".

The Chair: I'm getting the sense that he doesn't want to change it.

Mr. Sopuck, be quick.

Mr. Robert Sopuck: I think we're happy to support it. Regarding paragraph (f), I'm always skeptical about bureaucrats deciding about alternatives to projects, but the words "technically and economically feasible" certainly raise my comfort level on this one.

The Chair: So you're good with "and are directly related to the designated project".

Mr. Mike Bossio: Can we vote?

The Chair: Yes, we can.

Shall the amendment carry?

Mr. Robert Sopuck: A recorded vote.

(Amendment agreed to: yeas 7; nays 1 [See *Minutes of Proceedings*])

The Chair: Moving on to PV-25.

An hon. member: NDP-27 is done with, right?

Mr. Mike Bossio: Can we have a vote?

The Chair: Hang on.

Ms. Linda Duncan: Why isn't NDP-27—

An hon. member: There was a line conflict.

The Chair: Remember that I mentioned there's a line conflict. If we did what we did and voted for it, then NDP-27 goes. Okay?

Ms. Linda Duncan: All of it?

The Chair: Yes.

An hon. member: I can't find PV-25.

The Chair: It's in there. Keep going. It's after NDP-27.

PV-25—

Ms. Linda Duncan: What about lines 7 to 10? That's not covered.

The Chair: We're going to take a look at it. We're going to carry on. We're going to take a look and see if there's a way you can split it, which is what I'm hearing. If it came all as one, there's a conflict.

Mr. Mike Bossio: You've already ruled on this.

The Chair: I know we did. She can't. It's done. Okay?

Mr. Mike Bossio: I'm sorry, Chair, but there's already been a ruling.

The Chair: Let me just be clear, because I'm trying to be fair. What I'm saying is that we have allowed people to split their amendments.

Mr. Mike Bossio: But this is long after the vote and after the ruling.

The Chair: We didn't vote on this one.

Mr. Mike Bossio: We already did on NDP-27.

The Chair: I made a determination that, as a whole, it cannot be moved because there's a line conflict. If she is asking for a piece to be split out, I'm okay with that. We've been doing that all along, and I want to be consistent. All right?

We are at PV-25 right now. Ms. May.

Ms. Linda Duncan: So are you not going to consider that? I just need to know one way or the other.

The Chair: I am going to let you pull out (c), because we have done that. If you ask for that, which is what I understand you just asked for—

Ms. Linda Duncan: That's what I just asked for, but doesn't it go before PV-25?

Mr. Mike Bossio: Chair, I'm really sorry to push on this, but we've already voted on LIB-15, and prior to LIB-15 being voted on, you had already ruled that NDP-27 was out, right? That was prior to the vote, that NDP-27, CPC-1.3, and PV-17 were going to be line conflicts.

The Chair: There's a line conflict.

Mr. Mike Bossio: This was prior to the vote. The vote has gone ahead. It was ruled out. I don't know how you can go back now after the vote has already occurred on LIB-15.

Ms. Linda Duncan: She didn't allow me to speak to whether it should be a [*Inaudible—Editor*] conflict.

Mr. Mike Bossio: You had an opportunity at that time to speak when it was being ruled out on NDP-27.

Ms. Linda Duncan: That's exactly when I said it [*Inaudible—Editor*] rule on that—

Mr. Mike Bossio: No, you did not say that there was an issue.

The Chair: I don't want a fight at the table. I'm trying to be—

Ms. Linda Duncan: Whatever. They're going to vote it down anyway. It's a farce.

The Chair: I'm trying to be flexible to allow everybody a chance to talk to what they want to talk to.

My legislative clerk is willing to share. Go ahead, please.

● (1835)

Mr. Olivier Champagne: When the Chair says that a certain amendment cannot be moved if another one is adopted, it means it cannot be moved as we received it. Members are always free to move amendments from the floor, so in that case, part (c) of the original NDP-27 will be able to be moved after what is labelled "CPC-1.3".

The Chair: Thank you. All right. Maybe people are listening when it comes from someone else.

Linda, if you would like, which I understand you would, you wanted to do (c). Let's do—

Ms. Linda Duncan: Okay, I will move it from the floor, but you have it in front of you, so you can read it.

The Chair: It's replacing "lines 7 to 10 on page 20 with the following" and it's broadened it out.

Ms. Linda Duncan: Lines 7 to 10 on page 20 are to be replaced with "the extent to which the life cycle and lifespan—"

The Chair: Everybody can see it. Everybody has it in front of them. I don't want to spend too much time on it. I just want to give the opportunity for us to consider it and then vote on it.

Shall paragraph (c) of NDP-27 carry?

Hon. Ed Fast: A recorded vote.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 7; yeas 1 [See *Minutes of Proceedings*])

The Chair: Now we have PV-25.

Ms. May.

Ms. Elizabeth May: This is very straightforward. I'll present it as quickly as I can. This is based on testimony from the Assembly of First Nations.

My amendment changes the words "adverse impact" in the context of impacts on indigenous groups and peoples to "on any Indigenous group, including any impact that". By removing the word "adverse", I'm hoping it becomes implicit that it could be an indirect, direct, or cumulative impact that's being considered, not merely an adverse impact.

The Chair: All right.

Mr. Fast.

Hon. Ed Fast: Madam Chair, this is exactly what this legislation wasn't intended to address. We're talking about adverse impacts. Whenever we look at a big project that requires an impact assessment, we're trying to determine if there are adverse impacts to the environment. If you remove the term adverse, you introduce more uncertainty, because the word impact isn't being qualified. Now Ms. May is proposing it be expanded to include many more considerations that actually don't have adverse impacts on the environment. That would be a huge step backwards again.

What we're trying to do is provide proponents with more certainty, knowing what the bar is they have to meet. If it now goes beyond addressing the environmental impacts, we have a real challenge in Canada economically.

Ms. Elizabeth May: Very briefly, Madam Chair, this section doesn't relate to environmental impacts at all. This is an impact assessment bill now. This paragraph deals with impacts on the rights of indigenous peoples.

Now some of those can be enjoying the rights to hunt and fish, which involve an environment, but the paragraph I'm changing is to remove the word "adverse" in relation to impacts a project may have on the rights of the indigenous peoples of Canada within the Constitution Act.

Hon. Ed Fast: She's correct.

The Chair: She is. Okay.

Linda.

Ms. Linda Duncan: I just wanted to echo what Ms. May said. Isn't that supposed to be the whole point of this act? It's supposed to be based on sustainability, which has 17 factors.

The Chair: Okay, so I think we've now explained it.

Shall PV-25 carry?

Mr. Robert Sopuck: A recorded vote.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 7; yeas 1 [See *Minutes of Proceedings*])

The Chair: We are now on LIB-16.

Mr. Mike Bossio: This is, once again, dealing with indigenous knowledge in just replacing "traditional knowledge" with "Indigenous knowledge".

The Chair: We've had that discussion before.

Shall LIB-16 carry?

● (1840)

Hon. Ed Fast: A recorded vote.

The Chair: We'll have a recorded vote.

(Amendment agreed to: yeas 5; nays 2 [See *Minutes of Proceedings*])

The Chair: Thank you.

We dealt with CPC-1.3 before. Now it's PV-27.

Ms. Elizabeth May: This one is relating to the factors found on page 20. The current section that deals with Canada's ability to meet obligations is found in paragraph (i), and it reads, "the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change".

We have other international obligations and commitments, so this amendment broadens that out to say, "in respect of the environment, climate change and biodiversity".

The Chair: Do you want to have a discussion?

Mr. Sopuck, and then Linda.

Mr. Robert Sopuck: The last time I looked, Canada was a sovereign nation and we decide what our obligations are to our own citizens and our own environment regarding the environment, climate change, and biodiversity.

As an aside, I've been on the environment and fisheries committees ever since I became an MP and I've yet to hear anybody come up with a coherent, quantitative definition of biodiversity, no matter how often the word is thrown around.

Ms. Elizabeth May: Would you like me to do it for you now?

The Chair: No.

Ms. Duncan.

Ms. Linda Duncan: I like the redrafting, particularly because it is saying obligations and commitments in respect of environment, climate change, and biodiversity, because there are obligations and commitments to all of those. Sometimes it's a regional agreement. Sometimes it's a commitment like in the NAFTA side agreement.

The Chair: Are you changing it again?

Ms. Linda Duncan: No, I'm not changing it. Before it just said "environmental obligations" and then "commitments on climate change". It should say "obligations and commitments" to both, to all of those. That's what she did.

The Chair: All right, fair enough.

Mr. Bossio.

Mr. Mike Bossio: We agree with the spirit of where Ms. May is going with this, but we actually have our own amendments, LIB-106, and LIB-111, that are relevant motions. We'll be voting on those.

The Chair: Shall amendment PV-27 carry?

We'll have a recorded vote.

(Amendment negatived: nays 7; yeas 1 [See *Minutes of Proceedings*])

The Chair: We are moving on to amendment LIB-17.

Mr. Fisher.

Mr. Darren Fisher: On amendment LIB-17, we are going to go to line 30 on page 20, that Bill C-69, in clause 1, be amended by replacing line 30 on page 20 with the following:

> a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition *jurisdiction* in section 2 — that is in respect of a region related to

We heard about the importance of considering indigenous knowledge on impacts, and this amendment would ensure that consideration of this knowledge in assessments—oh, sorry, I'm on the wrong one.

Indigenous knowledge can come from a variety of indigenous organizations, not just the ones that were listed.

The Chair: Shall amendment LIB-17 carry?

Mr. Robert Sopuck: I would like a recorded vote.

(Amendment agreed to: yeas 5; nays 2 [See *Minutes of Proceedings*])

The Chair: We'll go to amendment LIB-18.

Mr. Darren Fisher: Amendment LIB-18 is that Bill C-69, in clause 1, be amended by replacing line 40 on page 20 with the following:

> paragraphs (1)(a) to (f), (h) to (l) and (s) and (t) is determined

As I was saying before, the amendment would ensure that consideration of this knowledge in assessments cannot be constrained or narrowly scoped.

Ms. Linda Duncan: Which one are you taking out?

The Chair: It just said (a) to (l).

Hon. Ed Fast: And (g) is out.

Ms. Linda Duncan: You took out (g). You are taking out a lot of them.

● (1845)

The Chair: No, we took out (g).

That's it, from what I can see.

Ms. Linda Duncan: What is (g), traditional knowledge?

Hon. Ed Fast: Is traditional knowledge what you're taking out?

Mr. Fisher, I'm trying to get clarity.

Ms. Linda Duncan: What are you trying to say there?

Mr. Darren Fisher: It's taking out the "traditional" and putting in "indigenous".

Hon. Ed Fast: Where does the indigenous part come in?

Ms. Linda Duncan: Paragraph (g) is traditional knowledge. Are you excluding that?

Hon. Ed Fast: You're taking out indigenous knowledge.

Ms. Christine Loth-Bown: Madam Chair, I could explain this amendment.

The Chair: That would be helpful, if you wouldn't mind doing that for us.

Ms. Christine Loth-Bown: Section 22(2) of the proposed act allows for this scoping of factors in an impact assessment. You scope in what needs to go into those tailored guidelines. Changing it to take out (g) means that the traditional knowledge cannot be scoped. It has to be mandatorily considered. That is how I interpret the proposed amendment.

Hon. Ed Fast: Okay, so that's why it's been taken right out, so that it doesn't fall under the scoping—

Ms. Christine Loth-Bown: Right. You are able to scope the other elements, but not what's in proposed paragraph 22(1)(g).

Ms. Linda Duncan: There are lots of other ones you can't scope too: 22(1)(p), 22(1)(q).

A voice: Yes.

The Chair: Okay, I think that's clarity. Thank you very much. I really appreciate that.

Shall LIB-18 carry?

Ms. Linda Duncan: I have a question.

The Chair: Linda, I'm trying to.... I paused. I'm waiting, and then I get going.

Ms. Linda Duncan: Okay, I'm raising a serious question.

Is the government saying that a panel will never have any role in scoping?

The Chair: On indigenous....

Ms. Linda Duncan: No, on anything. This gets only the agency and the minister to the scoping.

I've never heard of a review where the panel is not authorized to sit down with all the parties and scope the terms of reference for the review.

My understanding is that the panel essentially has almost no role under this bill.

The Chair: Ms. Loth-Bown.

Ms. Christine Loth-Bown: The scoping takes place in the early planning phase, where it's still under the agency to scope in what goes into the tailored impact statement guidelines. That being said, there are provisions for panels, and terms of reference need to be established for those panels. The terms of reference get approved by the minister, and the panel can add additional parameters into those.

The Chair: Mr. Fast.

Hon. Ed Fast: Madam Chair, could I ask Ms. Loth-Bown what the reason is for removing the scoping from the traditional knowledge piece.

Ms. Christine Loth-Bown: Well, traditional knowledge is a mandatory factor for consideration, and it says it must be taken into consideration.

Hon. Ed Fast: That is fine.

Ms. Christine Loth-Bown: To have it scoped would be contradictory to saying it must be taken into consideration, because what you can do in subsection 22(2) of the proposed impact assessment act is be able to scope the factors on a project-by-project basis and provide a rationale for why something is scoped in or not scoped in. Because all projects are not equal, we've laid out the factors here that would need to be assessed within a project context, but some of them may be relevant and some won't be, so then you provide a rationale for that.

But to be able to scope proposed paragraph (g), which is traditional knowledge, would be contradictory to the "must take it into consideration".

The Chair: Okay, I think you've said that a couple of times now, and I think it's clear.

Hon. Ed Fast: I must misunderstand what the word "scoping" means. When I think of something being scoped, it means that the minister or the agency frames or—

The Chair: That's exactly it.

Hon. Ed Fast: The frame could be large or it could be smaller, but it doesn't exclude it from consideration, right? When you're scoping, you're determining the width and breadth of that particular element.

Ms. Christine Loth-Bown: You're doing that. You may also be saying it's not relevant to a particular assessment and providing a rationale for that.

Hon. Ed Fast: Okay.

Why wouldn't the minister's agency have the ability, as is currently provided in the bill, to determine the width and breadth of the traditional knowledge piece as it relates to a particular project?

Ms. Christine Loth-Bown: It goes against the "must".

The Chair: Okay, I think that's it. We've done this one now.

Ms. Linda Duncan: I haven't had my question answered. There is nothing in this bill that gives the panel any authorization to scope the review. So is the decision that the panel will have no role in working with all of the participants in helping to scope the review?

I'm puzzled that we don't have (a), (b), and (c).

Ms. Christine Loth-Bown: A decision to move to a panel is taken by the minister.

Ms. Linda Duncan: This isn't a move to panel. It's scoping the factors.

● (1850)

Ms. Christine Loth-Bown: The scoping of the factors happens before there's a decision. It happens in the early planning phase, in terms of doing the tailored impact assessment guidelines, and then if there are, in addition, once the panel is struck...because the panel is struck after that.

Ms. Linda Duncan: I was asking you where in this bill it gives a power to the panel to further scope the review. I don't see a provision anywhere here.

Ms. Christine Loth-Bown: The terms of reference for panels, as I indicated earlier, are there in proposed subsection 41(1).

Ms. Linda Duncan: Well, that's just appointments to the panel.

The Chair: Linda, we're well past time.

Ms. Linda Duncan: Section 51 does not give any power to scope.

The Chair: Linda, I'm going to call the vote on amendment LIB-18.

Hon. Ed Fast: I'd like a recorded vote.

(Amendment agreed to: yeas 5; nays 3 [See *Minutes of Proceedings*])

The Chair: We now go to NDP-28. If it's adopted, NDP-29 cannot be moved because there will be a redundancy.

Ms. Linda Duncan: I am choosing not to do NDP-28. I prefer to do NDP-29, if that's all right.

The Chair: All right. Fair enough.

Ms. Linda Duncan: This is after line 14 on page 21. There's a big gap after line 14. It's before "Impact Assessment by Agency". What I'm adding in is a (d), and that would be:

> (d) a member of the public or any Indigenous group that may be affected by the carrying out of a designated project and that is participating in the assessment or consultation relating to the designated project.

This has to do with having to make information available. Right now there's only an obligation to give that information to the agency, the review panel, and the government but nobody else who is participating in this review. This was specifically raised by Nature Canada and the Mikisew Cree. It's critical that the information be made available and disclosed to all parties affected and participating in the review, and that would include any public intervenors and indigenous peoples.

The Chair: Thank you for that explanation.

Shall amendment NDP-29 carry?

Hon. Ed Fast: I would like a recorded vote.

(Amendment negatived: nays 7; yeas 1)

The Chair: There's more to come, lots more to come.

On PV-28, go ahead, Ms. May.

Ms. Elizabeth May: Madam Chair, this one takes a bit of navigating because the changes are made at page 21, line 14, but they affect maintaining a delegation power that exists a couple of pages later, at page 23. I say that just so you can follow, so everyone can be prepared as I explain this.

This is based on a recommendation from the Canadian Environmental Law Association. In section 24 we have an exclusionary section, "Application only when no referral to review panel". This is how it currently reads:

> Sections 25 to 29 cease to apply to a designated project if the impact assessment of the project is referred by the Minister to a review panel.

CELA's point is that section 29, which allows a project to have a delegation to another person, body, or jurisdiction, in carrying out the impact assessment of a designated project, is still relevant, even if they've decided to go to a review panel. Even if they don't, deleting section 29 doesn't really make sense, because by maintaining it you'll see more of an opportunity for government officials at different levels to work together in a coordinated and co-operative manner. That's the rationale for, essentially, leaving section 29 in, even when the project is referred to a review panel.

● (1855)

The Chair: Okay.

A voice: That reference is to page 23, I think

Ms. Elizabeth May: That's correct. That's where you find section 29, which reads in part, "The Agency may delegate to any person, body or jurisdiction".

Mr. Darren Fisher: Are those the last two lines on page 23?

Ms. Elizabeth May: Basically yes, and on to page 24. Section 29 is currently nullified. That section would "cease to apply to a designated project if the impact assessment of the project is referred by the Minister to a review panel." The Canadian Environmental Law Association's advice is to leave section 29 in. You still have the opportunity to consider a delegation.

The Chair: Okay.

Mr. Darren Fisher: Do you want to delete sections 25, 26, 27, and 28?

Ms. Elizabeth May: No, those remain in place.

The Chair: It's just making the change.

Mr. Darren Fisher: Oh, I see, yes.

Ms. Elizabeth May: Those are already deleted. Well, they're not deleted; they don't apply when there's a reference to review panel.

The Chair: Yes, okay.

Ms. Elizabeth May: This is advice from the Canadian Environmental Law Association, and I thought it was good advice, so I prepared an amendment.

The Chair: I think it's clear.

Shall PV-28 carry?

Mr. Robert Sopuck: A recorded vote.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 7; yeas 1 [See *Minutes of Proceedings*])

The Chair: We'll move to NDP-30.

Ms. Linda Duncan: We're on line 6 at page 22. We're moving forward here. Line 6 has to do with public participation.

Mr. Darren Fisher: That doesn't make sense.

Ms. Linda Duncan: It's after line 6.

The Chair: Yes. This isn't drafted right.

Okay, so what's your amendment? You have "replacing line 6 on page 22", which says "to collect that information".

Hon. Ed Fast: It is right.

An hon. member: She's adding a few words.

The Chair: You're right.

Ms. Linda Duncan: I'm simply adding in those words.

Hon. Ed Fast: She's adding "or a federal authority".

Ms. Linda Duncan: It's replacing that line.

The Chair: Yes.

Ms. Linda Duncan: We're all getting tired, including me.

The Chair: I got it. That makes sense.

Ms. Linda Duncan: They could want Fisheries and Oceans, for instance, to give them information, so it's "or federal authority to collect that information".

The Chair: Do you want to make a comment?

Mr. Robert Sopuck: Yes. This is outside the scope of normal impact assessment work. The proponent always does the study and can ask the federal government for data that it has, but to have a federal agency go out there and do a study that's part of an impact assessment is simply not in the tradition of impact assessments. It's the proponent that does the study.

Hon. Ed Fast: You guys all agree with that.

The Chair: Point well made.

Shall amendment NDP-30 carry?

Hon. Ed Fast: I'd like a recorded vote.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 7; yeas 1 [*See Minutes of Proceedings*])

The Chair: I'm going to try to get one more in before seven o'clock, if I can.

We'll move to NDP-31.

● (1900)

Ms. Linda Duncan: This is one that everybody should like.

The Chair: We're almost there. Let's quickly do it.

Ms. Linda Duncan: I've heard how popular it is. We're at line 8 on page 22. It would read, "The Agency must ensure that the public is provided with an opportunity for meaningful participation in the impact assessment".

The Chair: This is consistent with another one we moved. Is everybody good with that? Do you understand?

Shall amendment NDP-31 carry?

(Amendment negatived)

The Chair: I understand that people did not want to extend the session tonight. I know we're moving through it, and I'm trying to be very generous with the time so that people can explain themselves and understand each amendment carefully. I would like to suggest that tomorrow we try to start at nine o'clock.

Hon. Ed Fast: No.

The Chair: What about 10 o'clock?

I'm doing my best to give the time that's needed.

Hon. Ed Fast: You are.

The Chair: We'll be back, then, at 11 o'clock in room 253-D. The meeting is from 11:00 to 1:30 tomorrow.

The meeting is adjourned.

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